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CURRENT TOPICS

Betting and Gaming

THE Betting and Gaming Bill, published on Monday, is based on certain recommendations made by the Royal Commission which reported in 1951. A wide field is covered by the twenty-three clauses and six Schedules of the Bill, which, by extensive repeals of antiquated laws dating back to 1541, virtually makes a clean sweep of the law of gaming. The Bill provides for the registration of bookmakers and the establishment of licensed betting offices. In general, the use of premises for betting will continue to be illegal, but exceptions are made in favour of racecourses and tracks and licensed betting shops. It is unlikely that the machinery for licensing betting shops will be in operation before 1961. A committee of from five to fifteen justices (with a quorum of three at any meeting) in petty sessional areas will be the licensing authority. Bookmakers' accredited runners will be able to accept betting slips, although not in public places. What may prove controversial are the provisions of cl. 8, empowering the Racecourse Betting Control Board to impose its own terms upon bookmakers wishing to provide facilities for betting on horse-races by way of pool betting or at "Tote odds." No person under the age of eighteen will be permitted to be employed in a bookmaking business. Under the Bill no game of skill or chance will be unlawful in itself but only if it breaks certain stipulated rules, designed to ensure that chances are equal for all players and that no stake money or losses are disposed of except as payment of winnings.

Counterfoiled

ONE of the less attractive National Insurance regulations provides, with but few exceptions, for the extinguishment of the right to any sum payable by way of benefit where payment thereof is not obtained within six months from the date when the sum is receivable. Although not the first decision of the kind, a recently published one well illustrates the effect of the regulations. The facts are clearly set out in Commissioner's Decision No. R (P) 7/59. The case was concerned with an elderly widow in receipt of a retirement pension. Her habit was to present her pension book at a post office for payment monthly. On 26th July, 1957, she cashed orders payable up to that date in this way. Her next visit to the post office was on 29th August, 1957, when orders dated 8th, 15th, 22nd and 29th August were cashed. An order for £2 dated 1st August was overlooked, apparently because it had become folded back under its counterfoil. On 13th February, 1958, the order of 1st August was noticed and pointed out to the pensioner, who then asked for it to be paid.

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Payment was refused on the ground that the right to the sum in question was extinguished, and the Commissioner with regret upheld the decision to refuse payment. We do not doubt the correctness of the decision in law. It is, however, scandalous that no machinery is available for the re-authentication of National Insurance payment orders not cashed for over six months. The authorities are forced to avoid meeting clear moral obligations to insured persons by the technicality of the wording of reg. 12 of the National Insurance (Claims and Payments) Regulations, 1948 (S.I. 1948 No. 1041), as amended. Insured persons suffering from the rule cannot be blamed if they consider themselves to be the victims of sharp practice. Immediate steps should be taken to introduce a procedure for sanctioning payment of out-of-date warrants, and to amend the regulations accordingly.

House-to-House Collections

In the normal case, it is an offence to make a house-to-house collection for a charitable purpose unless the requirements of the House to House Collections Act, 1939, as to a licence for the promotion of such a collection have been satisfied. Section 2 of the Act of 1939 provides that where a person who is promoting, or proposes to promote, a collection in any locality for a charitable purpose makes to the police authority for the police area comprising that locality an application in the prescribed manner specifying the purpose of the collection and the locality within which the collection is to be made, and furnishes them with the prescribed information, the authority shall grant to him a licence authorising him to promote a collection within that locality for that purpose. However, in certain specified circumstances, a police authority may refuse to grant a licence or, where a licence has been granted, revoke it, but if a police authority adopt either of these courses of action, "the applicant or the holder of the licence may thereupon appeal to the Secretary of State against the refusal or revocation of the licence, as the case may be, and the decision of the Secretary of State shall be final." We imagine that such appeals are rare, but in recent days a successful appeal was made by the Chivers Cancer Association. The Association made an application for a licence to the police authority for Southend, and when this application was refused, an appeal was made to the Home Secretary. The appeal was allowed and a licence has now been issued as, where the Secretary of State decides to allow an appeal, the police authority must forthwith issue a licence or cancel the revocation, as the case may be, in accordance with the decision of the Secretary of State.

Children and Firearms

At a recent inquest at Neath, Glamorgan, when returning a verdict of "Accidental death" on a fourteen-year old girl, who died of gunshot wounds as a result of the accidental firing of a gun by a boy of thirteen years of age, the jury added the rider that the law relating to children and firearms "should be tightened up." The position is governed by the Firearms Act, 1937. Section 19 (1) of that Act provides that no person under the age of seventeen years shall purchase or hire any firearm or ammunition, but subs. (2) enables a person under the age of fourteen years to accept as a gift or borrow certain firearms, e.g., a smooth bore gun having a barrel not less than twenty inches in length, and a person under that age may, in certain circumstances, have in his possession other firearms for sporting purposes, for drill or target practice or for use at a miniature rifle range or shooting gallery (subs. (3)). We imagine that the members of the jury would wish to place further restrictions upon the use of firearms by children under the age of fourteen years, but it seems to us that there would be considerable opposition to such a move.

Liability of Innkeepers

In *Williams* v. *Linnitt* [1951] 1 K.B. 565, the Court of Appeal were prepared to accept that if a parking place was within the *hospitium* of an inn the innkeeper could not contract out of his strict liability in respect of the loss of or damage to a vehicle parked in that place. There was some divergence of opinion as to when a parking place was within this rule, but all the members of the court appear to have agreed that the rule applied to garages and places under cover within the precincts of the inn. This decision was applied in *Watson* v. *People's Refreshment House Association, Ltd.* [1952] 1 All E.R. 289, where Devlin, J., found that the runway of a petrol-filling station, in the same ownership as an inn but situated on the other side of the road, was not naturally within the *hospitium* of the inn; but in a recent case at the Chester Assizes Mr. Commissioner Fenton Atkinson, Q.C., allowed the possibility of the exclusion of liability by the owners of an hotel in respect of a car parked in the hotel garage. He was able to do this because s. 2 (2) of the Hotel Proprietors Act, 1956, reversed the effect of *Williams* v. *Linnitt, supra,* by providing: "Without prejudice to any other liability or right of his with respect thereto, the proprietor of an hotel shall not as an innkeeper be liable to make good to any guest of his any loss of or damage to, or have any lien on, any vehicle or any property left therein, or any horse or other live animal or its harness or other equipment." The plaintiff left his car in the garage of the hotel but the night porter drove it away and seriously damaged it in a crash. The defendants, the owners of the hotel, contended that notices disclaiming liability were displayed, but the court believed the plaintiff when he said that he did not see them. The learned commissioner gave judgment in favour of the plaintiff as the defendants had not done everything possible to bring the notices to the attention of their customers. The test formulated in *Parker* v. *South Eastern Railway Co.* (1877), L.R. 2 C.P.D. 416, and applied in *Richardson, Spence & Co.* v. *Rowntree* [1894] A.C. 217, was: "Did the defendant do what was reasonably sufficient to give notice of the conditions to the class of persons to which the plaintiff belonged?"

Thought for the Week

A man is riding a motor cycle along a highway in a metropolitan borough when without negligence on his part the motor cycle strikes a rut which is there owing to the non-feasance of the highway authority. He is thrown to the ground and sustains injuries. His motor cycle strikes a bollard, which is vested in the highway authority, and damages it. The motor cyclist is unable to recover damages for his injuries and for the cost of repairing the motor cycle and also has to pay for repairing the bollard. This appears to be the combined effect of the rule of non-feasance, s. 181 of the London Government Act, 1939, and the decision in *Kensington Borough Council* v. *Walters* (*The Times*, 31st October).

A WILL OF ONE'S OWN—I

WHENEVER legal draftsmanship is discussed two schools of thought emerge: the " well-tried words " school and the " say what you mean " school. The arguments in favour of well-tried words are familiar and formidable; they have been the prime cause of the ultimate disappearance of many learned professions, beginning with the priesthood of ancient Egypt.

If the solicitor is to retain, or recover, his place as a man of affairs, it must be of twentieth-century affairs and he will not do this by using seventeenth-century language. The business man is beginning to look on the " whereas" and the " aforesaid " of the lawyer as something on the level of " Ye Olde Tea Shoppe "—neither good taste nor good policy—and to insist on commercial agreements being written in basic English. The same tendency will spread to other documents if the law is to serve not merely itself but the public.

Nowhere is the " well-tried words " school more sure of itself than in the drafting of wills, and we have therefore decided to take wills for our first tilt.

Ye Olde Knowe-Howe

In the first place let it be admitted that there are a few people who like an antiquarian will and would not feel they had got their money's worth if given a document which could be understood by the light of reason alone. But such people are in the minority and it is no responsibility of ours to pander to their frailty. It is a strange fact that some laymen are more legalistic than lawyers, like the client who thinks he can escape liability because his Christian name is mis-spelt in a contract, and we ought to convince them that no court of law to-day perversely misconstrues a common-sense expression just because it is not couched in jargon.

The main argument for the traditional precedent is that everyone knows what it means because it has been used, and pronounced on, so often. This assumes that the precedent is used in the right way and in the right place, but the reports contain many cases where intentions have been defeated by unimaginative use of stock phrases. As Jenkins, L.J., said of a contract in *Re Hollebone's Agreement* [1959] 2 W.L.R. 536; p. 349, *ante*, " whoever was responsible for the preparation of that unfortunate document appears to have performed his task by the wholesale adoption of a well-known common form without due regard to the circumstances of the particular case." More important is the danger that continued use of ancient precedents may restrict our power of expression and consequently of reasoning. When, as an articled clerk, we confessed to the deadly sin of having made up a clause, we were sent back to the book to find one more authentic, even if less appropriate. How much better draftsmen we might have become if we had been encouraged to go on thinking for ourselves! " We need to guard," says a book on psychology, " against the kind of preparation that will stultify thinking and destroy creativity leading instead to routine, pedantic and unimaginative approaches to problems."

The dead hand

Our quarrel is not so much with the precedent book itself, which can always make a good servant even if it is a bad master, as with precedents in the language of days and ideas which have long since passed. It is a pity the practice of reading wills at a funeral is going out of fashion, because there are clauses in the standard form of will which make the most pedantic of us blush to read aloud in company, and if we blushed more often we might start to think.

Even while the testator is with us, our language causes trouble. To follow the thread of the usual trust for sale and investment is quite beyond the powers of most laymen, and some solicitors think it kinder to incorporate the statutory will forms and apologise for not having a copy handy. We all, too, know the client who complains that he did not want a share of his estate held in trust for *X* absolutely, " he wanted *X* to have it." If we explain that *X* will have it and we only used the word " trust " because we always do, the client thinks we are fools and the client may be right.

Content and form

Modern conditions, particularly taxation, call for modern methods in will making, and in the last few years we have become familiar with provisions, such as the discretionary trust, which were hardly known before the war. The development of this new machinery calls more than ever for up-to-date draftsmanship if we are not to suffer from a perpetual schizophrenia, as we pour the language of Cromwell into our electronic dictating machines.

The law takes a pride in dispensing with punctuation, especially commas, but there is really no more sense in this than in dispensing with typewriters. When clients ask us, with tolerant amusement, why there are no commas in our wills, we usually explain that commas can get misplaced and that we have to be clever enough to make a sentence intelligible without them. In fact, we produce ninety-nine sentences of extreme obscurity to avoid the typist's error which might have crept into the hundredth.

Parliament does not scorn commas in statutes, and Parliament has given us another aid to drafting which we consistently ignore. It ought to be obligatory for s. 61 of the Law of Property Act, 1925, to be framed in solicitors' offices.

> In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after the commencement of this Act, unless the context otherwise requires—
>
> (*a*) " Month " means calendar month;
> (*b*) " Person " includes a corporation;
> (*c*) The singular includes the plural and *vice versa*;
> (*d*) The masculine includes the feminine and *vice versa*.

If we had this hanging at eye-level on the opposite wall, we might find it easier to resist the " his her or their " and the " person or persons " school of draftsmanship.

With the aforesaid thoughts in on or under our mind we wish to suggest in later articles a series of precedents for wills of to-day.

(To be continued) PHILIP LAWTON.

Wills and Bequests

Mr. E. HUGHES, solicitor, of Rhyl, left £31,672 net.
Mr. JAMES KIRKLAND, solicitor, of Saltcoats, left £46,791 gross
Mr. J. J. REED, solicitor, of Penrith, left £56,100 net.
Mr. J. S. WHELTOW, solicitor, of Kirk Ella, left £9,631 net.

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PREPARATION OF BUILDING CONTRACTS

THE most important contractual arrangements private individuals undertake in their lives are probably their marriages and the purchases of their houses. They seldom take legal advice in the former instance, but usually do so in the latter. Where they are purchasing an existing house, solicitors will require little guidance, since the problem is essentially a conveyancing one. But where the individual builds his own house, he may seek legal advice in the matter, and this article is written with a view to giving some practical assistance to solicitors in a situation with which they may not be entirely familiar. Since the modern standard forms of contract are widely used for even larger projects—e.g., the construction of housing estates, blocks of flats, shops, offices or factories—it may also help those advising local authorities, companies or individuals undertaking works of this magnitude as well.

It is proposed to consider the main pitfalls contained in the two standard forms of contract issued under the ægis of the Royal Institute of British Architects (R.I.B.A.), and examine how far these forms of contract fail to give adequate protection to the employer, with suggestions for possible modifications in his interest.

Forms of contract

The forms of contract are themselves a single document, embodying articles of agreement and conditions of contract, and incorporating by reference drawings and, in the case of the form where quantities form part, bills of quantities, and, where they do not, a specification. These two forms are, for convenience, here referred to as "the bill form" and "the specification form." The common use of the expression "lump sum" to describe the specification form is liable to be misleading to lawyers, since both types of contract are of the legal category known as "contracts for a lump sum ascertained or to be ascertained," and both are, on the other hand, liable to considerable adjustment of the contract price, arising in various ways. Further contract documents are the schedule of rates (in the specification form) and the lists of basic prices which should be attached to the bills or schedule of rates, as the case may be, for the purpose of operating the fluctuation clause (cl. 25).

It is, in fact, vital to use the correct form when preparing the contract documents, since the bill form (cl. 2) expressly deprives any document entitled a specification of contractual force (in this form the specification must be contained in the bills themselves) and the specification form (by cll. 2 and 10) similarly denies contractual force to any document entitled a bill of quantities. Furthermore, if any alteration of the standard forms is required by either party, it is essential to make the alteration in the form itself since (by cl. 10 in each case) modifications of the conditions of contract contained in the bills or specification are also deprived of contractual force.

Each form contemplates and makes provision for supervision and control by an architect, and the bill form makes provision for a surveyor as well. The result is that, when either form is used in conjunction with an architect, the employer cannot be said to be relying upon the skill or judgment of the builder, and the specification or bills, as the case may be, will, together with the drawings, constitute the exact measure of the work undertaken by the builder. While the builder expressly undertakes to complete the works (and must to that extent satisfy himself of their practicability for that purpose), no warranty as to their suitability or structural soundness, once completed, will be implied on his part, and any omission of work, however necessary, in the bills or specification can only be remedied by way of variation. In addition, while the builder impliedly undertakes to provide materials and workmanship of a reasonable standard, this obligation may well be over-ridden by express provision in the bills or specification.

For example, a builder who excavates his foundation trenches to the depths and widths required by the contract will not be liable if, after completion, the house collapses because in fact greater depths were necessary. Again, a builder who provides a 9-inch brick wall as specified will not be liable if the wall as specified fails to keep out driving rain. The vital importance of skilled professional preparation of the specification or bills cannot, therefore, be over-emphasised. Indeed, in the case of the bill form, the bills are deemed by cl. 10 to be prepared in accordance with the Standard Method of Measurement of Building Works, and failure to follow meticulously the rules in this document may expose the employer to claims for extra payment by the builder for minor or ancillary processes of work which should have been separately billed in accordance with its rules.

Differences between the bill and specification forms of contract

It may be asked, what are the effective differences between the bill and specification forms of contract? In law, the only significant difference lies in the method of calculation of the price. In the bill form, quantities of each different work-process have been taken off the drawings by the employer's quantity surveyors and inserted in the bills for individual pricing and grossing up by the tendering builders. When the work is carried out, however, either party has a right, even if no variations have been ordered, to demand measurement of the work as carried out and recalculation, if necessary, of the contract price; this follows from the provision in cl. 10 of the bill form. In practice, this right is seldom likely to be exercised by the employer, whose surveyors have, after all, prepared the bills, and any remeasurement by them will usually be confined to varied work, but nevertheless it is the vital distinction of the bill form of contract. The rates in the bills are also used for valuing varied work (cl. 9). In the specification form, on the other hand, no right to measurement and valuation of the contract work exists, the price to this extent being a firm price, and varied work only will fall to be measured and valued in accordance with a special contract document prepared for this purpose, called a schedule of rates (see cl. 2, specification form), which is peculiar to this form of contract and which, of course, contains no quantities, though in other respects it will resemble a bill of quantities.

Choice of contract

One of the first questions upon which a building owner may wish to seek guidance is in the choice of the form of contract. The fees for preparing bills of quantities are substantial, and the employment of a quantity surveyor is further required under the bill form for measurement and valuation of variations (cl. 9). In addition, architects frequently leave valuations for interim payments to the quantity surveyor, though there is no authority for this in this form of contract. The fees for these services are therefore an additional expense to the building owner. Even where, as sometimes happens, the

architect is also named as the surveyor, he will, at any rate under the R.I.B.A. scale of fees, be entitled to extra remuneration for this work. Architects welcome the use of this form, which removes much of the detailed work of administration from their shoulders without reducing their fees. Builders, too, welcome it, because the taking off of quantities from the drawings at the employer's expense reduces the amount of work required from their estimating staff at the time of tendering. In addition, the presence of errors in the quantities in the bills affords an astute builder the opportunity of quoting an apparently competitive price when, in reality, a recalculation in his favour will have to be made when the work is eventually carried out. In fact, the Federation of Building Trades' Employers advise their members to refuse to tender without quantities where the contract sum exceeds £3,000.

The building owner will therefore find himself under pressure from many directions to adopt the bill form of contract. The justification usually advanced for the bill form is that it leads to finer pricing by builders, but it is doubtful whether in comparatively uncomplicated and familiar work this is in fact the case. Certainly, there seems no justification for any arbitrary figure above which bills should be used, and it is difficult to see why a dwelling-house of even superior quality should merit the preparation of bills and the additional surveyor's fees involved.

Whichever form of contract is adopted, the building owner must be prepared for substantial modifications of the contract price, apart from any question of variations, under the fluctuations clauses for labour and materials (which are expressly required to be incorporated in all sub-contracts as well), and also by the adjustment of P.C. and provisional sums.

Use of P.C. or provisional sums

The use of P.C. or provisional sums, which are inserted in the bills or specification by the employer or his advisers and not by the builder, has substantially increased in recent years, and it is not unusual to find more than half of the work dealt with in this way in more substantial contracts. It is beyond the scope of this article to go into the reasons for this, and for the abuses and difficulties which can result, but the practical effects from the employer's point of view are—

(*a*) that unless a detailed specification and firm quotation are obtained for the work so described *before the contract is let to the builder* the employer has no exact knowledge of what the final cost will be, and sometimes not even of what the work will in fact be; in addition, if savings are required before a contract is let, an employer can easily be misled if apparent reductions are made in these items;

(*b*) the burden of design on the architect (since these items frequently involve a design element provided by the specialist sub-contractor who often carries out work so described), and of taking off quantities on the quantity surveyor, is reduced without any corresponding reduction in their fees;

(*c*) the postponement of decision and design so achieved may well involve delay and dislocation at a later stage;

(*d*) the adjustment of these items when the work is finally carried out will involve further fees for the quantity surveyor if the bill form is used.

It follows that, in the employer's interest, these items should only be used where the work concerned is genuinely provisional in character, either because some element of choice by the employer is involved, or because it is for one reason or another impossible to decide upon or describe the work at the time of tendering.

By a curious and quite illogical anomaly, the terms P.C. and Provisional Sum are commonly found in association with provisions in building contracts empowering the employer to nominate sub-contractors or suppliers *after* the contract is let. If, however, the desired sub-contractor or supplier is known at the time of tendering, there is no need to make use of these provisions (which, as is shown below, expose the employer to considerable legal hazards in the standard forms), and the sub-contractor can be specifically identified and the work specifically described in the specification or bills, as the case may be, and the builder left to price it (in the bills) or include it in his contract price (in the specification form) in the usual way.

Binding force of architect's final certificate

Another important provision of the standard forms (only recently introduced in the latest revised edition), which may be somewhat unexpected, is that by the new cl. 24 (*f*) the final certificate of the architect is made binding in a wide range of matters upon the parties, and upon any arbitrator or the courts, except in certain rather narrowly defined circumstances, unless, *prior to the issue of the certificate*, notice of arbitration has been given by the dissatisfied party. It is difficult to believe that this provision will last very long once its practical disadvantages come to be realised, but at the moment it is a part of the latest standard forms. Its effect, for instance, is to deprive a building owner of the right to complain of any defect in his building unless he has served notice of arbitration prior to the issue of the final certificate. It is more likely to prejudice the employer than the builder, since the latter will in practice usually know of any dispute with the architect prior to submitting his final account, and can safeguard his position by giving notice of arbitration when doing so, whereas the employer's first knowledge of wrongly conceded claims may well be on receipt of the final certificate, and defects, of course, may manifest themselves long afterwards.

Many provisions of the standard forms are not mentioned in this article, either because they are well known, or because they are not potentially inimical to a building owner.

Consideration is given below to those terms in the R.I.B.A. standard forms of contract which are so inimical to the employer's interest as to warrant some modification or alteration on his behalf, and also to clauses, reasonable in themselves, which require close attention at the tender stage in order to avoid possible difficulties after the contract has been let.

In the writer's view the standard forms of building contract do not at present confer adequate protection on the building owner. Readers must make up their own minds on this matter. If, however, this article has served to draw attention to some of the potential sources of danger in these contracts from the employer's standpoint, its object will have been achieved.

CONSIDERATION OF CERTAIN CLAUSES

(*a*) *Contract documents*

In the specification form, it is important that the schedule of rates should have been completed and priced before the contract is let; this document, it will be remembered, is used in this form for the valuation of variations under cl. 9. Particularly where substantial works by way of addition are contemplated, the prices in this document will need to be carefully examined by the architect. In addition, both the specification and bill forms

require a list of basic prices of materials to be attached to the contract documents for the purpose of working the fluctuations clause (cl. 25A). It is essential that these prices should be carefully checked by the architect to ensure that they represent the effective market price of the materials in question at the relevant date, since if they are too low the contract sum will be correspondingly increased.

(*b*) *Workmanship*

Clause 5 in each form provides that " materials and workmanship shall so far as may be procurable be of the respective kinds described in " the bills or specification, as the case may be. In the past, most building contracts contained an express general provision that all work and materials should be of the best quality, save where otherwise described. Some such general provision should accordingly be placed at the beginning of the bills or specification, since otherwise a failure to describe every single material or work process expressly may give a loophole to the builder. It is suggested that the provision might be " Save where otherwise expressly stated, all materials and workmanship shall be of first quality and the best reasonably obtainable." In addition, the words " as far as may be procurable " should be struck out of cl. 5 of the conditions, since there seems to be no justification for affording the builder such a gratuitous opportunity of evading the provisions of the specification or bills.

(*c*) *Insurance*

By cl. 15 (*a*) the contractor is required to effect the insurances specifically required by the bills or specification. The draftsman of the bills or specification must therefore describe with absolute precision the type of insurance required. The provision should make clear whether the insurance required is of the employer alone, of the contractor alone, or of both jointly. (In this context, the cross-indemnities, express and implied, to be found in cl. 14 should be borne in mind, so that joint insurance may well be necessary to prevent the insurers pursuing those indemnities against the other party to the contract.) It should exactly define the risks to be insured against, any upper limit on the sum insured, any " excess " (i.e., the first part of the damage which is sometimes expressly not covered under insurance policies), and the degree to which sub-contractors' insurance is required.

(*d*) *Liquidated damages for delay*

Clause 17 makes provision for these, and the amount required should be inserted in the appendix. In the case of profit-earning assets (e.g., a factory, block of flats, or shops) damages for delay may be both heavy and unpredictable, and the employer may sometimes be advised to rely on common-law damages rather than liquidated damages. If so, this clause needs amendment.

(*e*) *Extension of time*

Clause 18 allows extension of time (for the purpose of operating the liquidated damages clause) for a number of reasons (which include bad weather and nominated sub-contractors' delays). This list is (relatively) unobjectionable, but lawyers may wonder whether cl. 18 (*a*), which allows an extension of time where " the contractor shall be unable for reasons beyond his control to secure such labour and materials as may be essential to the proper carrying out of the works," is not carrying solicitude for the builder to extreme lengths, and it is suggested that this clause can well be struck out in its entirety.

(*f*) *Determination by employer*

Clause 19 (*a*) lays down an extremely cumbersome process, requiring the service of a series of notices within strict time limits, to enable the employer to terminate the contract, in the event of three serious breaches by the contractor involving dilatoriness on his part. At least this difficult clause can be spared the added difficulty of the final words " provided that notice in pursuance of this clause shall not be given unreasonably or vexatiously and shall be void if the employer is at the time of the notice in breach of this contract." The meaning of this proviso, in relation to the seriousness of the breaches upon which the whole clause is conditioned, is most obscure and the proviso can be deleted without injustice to anyone.

(*g*) *Determination by contractor*

Clause 20 lays down a much more speedy and effective remedy of determination for the contractor. The clause is, however, conditioned not only upon two serious breaches by the employer, or his bankruptcy or liquidation, but also, astonishing as it may seem, " if the whole or substantially the whole of the works . . . is delayed for one month by one or more of the causes, other than local combination of workmen, strike or lock out, which are named in cl. 18 of these conditions." Clause 18, it will be remembered, allowed extensions of time for (among other matters for which the employer is not responsible in any moral sense) bad weather, or delay on the part of nominated sub-contractors. When it is realised that on a cl. 20 determination the contractor is entitled to all expenses, loss of profit on uncompleted work, and seizure of all materials (even if paid for by the employer) as security for the sums due to him under the clause, and when it is also remembered that the reference to cl. 18 might even be held to include cl. 18 (*a*) (quoted above) it is clear that no business or legal adviser should permit a client to sign a contract with cl. 20 unamended. The amendment should take the form of deleting the whole of the second part of cl. 20 (1) referring to delay.

(*h*) *P.C. and provisional sums*

Mention has been made above of the disadvantages inherent in the excessive use of P.C. or provisional sums. To reiterate the advice given, only work which cannot be clearly described and priced at the time of the contract should be so designated. Wherever a quotation for the work has been obtained at the date of the contract, the work should be described and priced in the usual way with (if necessary) the selected sub-contractor or supplier named in the specification or bills, as the case may be. The builder, if he does not wish to place an order with that supplier or sub-contractor, has his remedy—he need not tender or sign the contract.

(*i*) *The final certificate and arbitration*

Also pointed out above are some of the pitfalls in the new cl. 24 (*f*) of the 1957 revised edition of the standard forms, which seeks to clothe the architect's final certificate with a high degree of finality as between the parties. This clause is more likely to prejudice the employer than the builder, in practice operating to deprive the employer of his remedy for defective work while in no way inhibiting the builder from advancing his claims for payment. If this view is shared by readers, sub-cll. 24 (*g*) and (*h*) of the standard forms should be deleted, and the words " subject to the provisions of cl. 24 (*g*) of these conditions " correspondingly deleted from cl. 26 (the arbitration clause). Alternatively, if the 1955 revised edition of the standard forms is available, this should be used.

(*j*) *Arbitration*

The standard forms contain provision for an independent architect arbitrator; it is important to make the special adjustments in this clause if the parties do not intend to name the arbitrator expressly. If arbitration is not desired, the clause can be deleted without damage to the contract as a whole. There is much to be said both for and against arbitration. High Court proceedings (almost always, of course, before an official referee) are cheaper, as the arbitrator's fees are avoided. County court proceedings, however, will usually end up before a technically qualified referee for inquiry and report, so that this factor does not apply. On the other hand, in arbitrations, time can often be saved on technical matters, though it may be lost if the parties' representatives cannot keep their legal submissions to a minimum. The quality of many of the arbitrators appointed by the President of the R.I.B.A. is extremely high. If a building dispute is in the country, they will often be familiar with local practice and conditions. On the other hand, if the sums involved are large and a real legal issue is involved, an arbitrator's award cannot be said to carry any practical finality, since a special case will inevitably be requested.

On the whole, arbitration clauses are probably valuable, because small disputes can sometimes be dealt with speedily by an arbitrator without the need for solicitors or counsel, and there is no doubt that a genuinely independent technical man does inspire confidence in the parties, who frequently are more content to abide by his decision than by that of a lawyer or judge.

I. N. DUNCAN WALLACE.

Law Reform Series

THE MACHINERY FOR LAW REFORM

DURING the past year, both the General Council of the Bar and the Council of The Law Society have been extremely active in discussing and presenting practical recommendations for law reform.

Both gave evidence to the Inter-departmental Committee set up by the Lord Chancellor and the Home Secretary, under the chairmanship of Mr. Justice Streatfeild, to review present arrangements in England and Wales for bringing to trial persons charged with criminal offences and for providing the courts with the information necessary to enable them to select the most appropriate treatment for offenders. The report of this committee is still awaited. Both also gave evidence to the committee set up by the Lord Chancellor under the chairmanship of Mr. Justice Pearson concerned with funds in court. This committee, in its recently published report (see article at p. 801, *ante*), recommends that the range of permitted investments for funds in court should be widened to include equities.

Can we hope that this spate of interest in law reform will be followed by a flood of legislation bringing with it a more adequate and satisfactory system within a reasonable period of time? Mr. Gerald Gardiner, Q.C., in an article concerned with lawyers' law reform[1], makes the melancholy and somewhat dampening comment: "It would be difficult to deny that most of the recent reforms in our law have come between a quarter and half a century later than they should have done or to assert that, with such provision for law reform as we now have, there is any reason to suppose that any obvious anomalies remaining in our law are likely to receive attention, if at all, in any shorter period of time."

Those who have tried to profit by practical experience and suggest changes, some moderate and some far reaching, in a system they admire but would like to see perfected, feel exasperated when they seek to trace the reason for this frustrating blockage between recommendations and results. In analysing the situation, Mr. Gerald Gardiner, Q.C., stated in the same article (p. 56): "Our organisation for justice cannot, it is said, be satisfactory unless and until some Minister has responsibility in this field with such exceptions as may clearly have been made the responsibility of some other specific Minister." Sadly, we must admit that lawyers' law reform is hardly likely to be a vote-winner in any politician's programme. Nevertheless, a thorough overhaul of the present framework is obviously necessary.

The Lord Chancellor's functions

At present the Minister responsible for law reform is the Lord Chancellor, with his small and overworked department. The holder of this high office has multifarious duties, of which responsibility for law reform is only one. These include duties as a Cabinet Minister, presiding from the Woolsack over the House of Lords sitting for ordinary public business and acting as leading Government spokesman therein, presiding over the House of Lords sitting as a final court of appeal, undertaking such administrative duties as supervising the machinery of law administered in the Supreme Court and county courts, and appointing judges of the High Court and county courts, recorders and justices of the peace.

[1] "Machinery of Law Reform in England," *Law Quarterly Review*, vol. 69, 1953, p. 46.

A strong case could be made out for moving responsibility for law reform to a special Ministry of Justice in which it would be the duty of the Minister to ensure that overdue law reform was speeded through Parliament. However, this would be contrary to a long tradition in this country, although it appears to have worked well elsewhere. The following proposals would meet the need for overhauling inadequate machinery without making inroads into the much cherished tradition:—

(*a*) By Act of Parliament the Lord Chancellor should be made responsible for law reform.

(*b*) The work of law reform should be mainly undertaken by a new Minister, i.e., a Vice-Chancellor, a lawyer and Member of the House of Commons, with a permanent secretary and small staff.

(*c*) The Lord Chancellor should appoint a Law Reform Council of lawyers and laymen to advise, watch and report on progress of law reform generally. The present Law Revision Committee, although permanently in existence, can only consider matters referred to it by the Lord Chancellor. The suggestion put forward here is that the Council itself should initiate proceedings. Interested persons and societies should continue to have the opportunity to offer memoranda on matters of interest to them, for example, as they are doing at present concerning the position between husband and wife in tort—a subject now under consideration by the Law Revision Committee.

The value of the above proposals would be that, unlike the present situation, once the Law Reform Council had deliberated and made recommendations upon some particular matter, responsibility would then rest with the Vice-Chancellor to ensure that Parliamentary time was found to consider and, if necessary, implement the recommendations.

Private Member's Bill

The introduction of a Private Member's Bill is a possible method, much vaunted in theory, of introducing law reform at present. To indulge in this adventure, the would-be reformer requires a stout heart, fantastic luck and an overabundance of patience. Members of Parliament who win a place in the yearly ballot often have special interests they wish to further, and the majority are not concerned with lawyers' law reform. No measure can be passed which requires financial implementation. Furthermore, in order to succeed, the Bill must command the support of Members from both sides of the House.

The progress of the Law Reform (Enforcement of Contracts) Act, 1954, is not without fascination. For many years previously, lawyers had agreed with the Law Revision Committee that s. 4 of the Statute of Frauds, 1677, should be abolished. In 1953 a Member of Parliament, recently called to the Bar, drew a place in the ballot and was persuaded that, *inter alia*, law students in future should be deprived of an easy option in answering perennial questions based on contracts "not to be performed within the space of one year from the making thereof." He was able to get fellow lawyers on the other side of the House to support this view. But for the luck of the ballot, anachronistic evidence in writing would still be required and the pleading of an out-dated technicality prevail over equitable principles.

Reformers concerned with the passing of the recent Legitimacy Act, 1959, to legitimate the children of certain void marriages and otherwise to amend the law relating to children born out of wedlock, had to believe in luck. Four years after the Bill had been drafted, Mr. John Parker, M.P., won a place in the ballot, and introduced this legislation in preference to all other fervently lobbied subjects. Ever since the Legitimacy Act, 1926, which excluded the legitimation of persons whose father or mother was married to a third person at the time of birth even if their parents subsequently married, attempts had been made to get the law altered. When the Bill was introduced in the 1958–1959 session, the public response and Press support were immediate and sympathetic.

Appointment of a Vice-Chancellor

If a Vice-Chancellor were appointed on the lines advocated above, this reliance on Private Members' Bills as one of the few although demonstrably inadequate methods of law reform would lessen to a considerable degree.

It is the judges who know most about the law and the ways in which rather less than justice can be dispensed. To quote Mr. Gerald Gardiner, Q.C., once again (*op. cit.*, p. 55): "It is unfortunate that our judges, burdened as they are, especially on circuit, with crowded lists, have not more time for the consideration of law reform because there can be no doubt that law reform would be much better initiated by the judges than by anyone else." Except as chairmen of Royal Commissions or Committees, their experience is ignored.

Some method of tapping their daily accumulated knowledge and their collective opinions on the inadequacy of lawyers' law should be devised. With the exception of comments passed in open court as part of a contrary judgment, the frustration of the judges and the loss of their valuable contribution remain the only outcome of the present system. The Vice-Chancellor, his department and the Law Reform Council would be able to receive and consider communications from the judges, where necessary.

The renewed interest in the need for law reform—of which the recent evidence of the General Council of the Bar and The Law Society to various bodies is a good example—behoves us to work for what Mr. R. S. Pollard[2] has described as "a small group of trained and enthusiastic civil servants, under a Vice-Chancellor, who will watch and consider the whole field of law, see how it works, and when it works badly or when decisions of the courts cause hardship or injustice make suggestions for reform and take steps to secure amendment of the law." By such measures, schemes for law reform may yet become reality in the lifetime of practical dreamers.

JEAN GRAHAM HALL,
Hon. Secretary,
The Society of Labour Lawyers.

[2] "Speed up Law Reform," The Fabian Society.

PUNISHING THE LOSER

EVER since the case of the couple caught cuddling in a car, who said that it cost them £500 to prove that their behaviour was within the law, there has been a great deal of discussion in the Press and among men on buses on the subject of whether or not the costs of a person found not guilty after trial on a criminal charge should be paid for him, either from central or local funds. It is curious that a movement in this direction should suddenly have obtained impetus at a time when many solicitors have been beginning to wonder whether the existing rule in civil cases, whereby the loser pays the winner's costs as well as his own, might be modified.

In criminal cases, the views of lawyers seem to agree, but one or two unfortunately-phrased statements have received publicity and, in so doing, have increased the public's suspicion that lawyers do not accept the classic principle that not guilty means innocent. Lawyers, of course, know from first hand experience how often a man found not guilty is far from innocent and may even be actually guilty, but most of them agree that it is right to maintain the principle that, unless you are found guilty, you are entitled to say you are innocent. Where lawyers really differ from those members of the public who are insisting that costs should follow the verdict in every criminal case is that lawyers are more perceptive of the true function of the police than the public are.

Duty of the police

The duty of the police is to make inquiries whenever a crime appears to have been committed, and if the information they gather suggests that a *prima facie* case exists against any individual, then the police must place that information before a competent tribunal. It is an old platitude that prosecuting counsel neither win nor lose cases. They present them. A good prosecutor proves his quality by presenting a case fairly and accurately and not by fighting for a win.

If one accepts that the police are under an inescapable obligation to lay the facts before a court when a *prima facie* case exists against any person, and provided one is satisfied that the police do this in a proper and impartial spirit, then it becomes obvious that the police neither win nor lose cases, and that they should not be punished (nor should their employers) by having to pay out money when the court finds the accused person is innocent. It is up to all of us to conduct our lives in such a way that we do not become involved in suspicion. In a crowded and closely regulated society it is inevitable that sometimes accident may cast suspicion on us, and we must be prepared to meet the expense of establishing our innocence as a normal incident of living in such a society.

It remains true, of course, that there may be cases where the police have acted with such negligence or malice or stupidity that they bring a charge where no justifiable ground for suspicion exists. All the necessary powers to deal with such cases were provided in 1948 and re-enacted in 1952. In fact, had it not been for a perhaps unfortunately-worded Home Office circular, courts might have handed out costs to a good many more unjustifiably accused people than they have done and the present brouhaha would never have arisen. Now that the Lord Chief Justice has clarified the duties of judges and magistrates in an important statement made on 19th October, 1959 (see p. 819, *ante*), it will be interesting to see how rapidly the granting of costs in proper cases gathers momentum. Solicitors, as usual, are going to have to do a lot of explaining when they get a client off but fail to recover costs.

Civil litigation

Meanwhile, the world is beginning to look on civil litigation with different eyes. There is still an element of trial by combat in the minds of the English public, even if it may have been exorcised from English law. There is no doubt that the

principle of requiring the loser of a civil case to pay the costs of the winner has had (and probably continues to have) very widespread acceptance in the public mind. If one suggests the contrary, it is apt to raise a cry of horror.

Lawyers who see how these things work out in practice may have other views. Until a few years ago, county court judges used to give costs to the winner in possession cases based on the greater hardship issue. Most judges, perhaps all judges, have stopped doing this. They reasoned that that particular class of case was one in which nobody could have forecast the result and nobody could possibly be blamed for bringing it before the court. It was the only way of solving an otherwise insoluble difference of view.

Greater hardship possession cases, however, are not the only ones of which it can be said that neither party can be blamed for coming to the court. A classic example is a case designed to procure an interpretation of an obscurity in an Act of Parliament or in some previous judgment. In cases depending on factual evidence, the proofs available to counsel on both sides may each point to victory and the balance of truth only emerges in the giving of verbal evidence under cross-examination. In cases dependent on the law of contract, the issue may depend upon the interpretation of a clause upon which two equally eminent counsel flatly disagree. In defended divorces, all too often both parties profoundly believe that all Christendom would be on their side if only the truth were known.

In all these cases, private individuals find themselves in the position that they are facing a crisis which can only be resolved by utilising courts which the State has provided for that very purpose. Each party may be honest and upright and believe himself in the right. Each may have been told by his solicitor and by counsel that he is justified in proceeding. If one forgets for a moment the vexatious litigant and the malicious or crooked litigant, and simply remembers the vast majority of reasonably sensible people who need a legal decision from time to time just as they may need a surgical operation, the injustice of the present system becomes apparent. Nobody should be punished if he goes to law in a reasonable spirit with a reasonable case, simply because in the end the court finds against him.

Costs of litigation unknown

A reflection that might interest the Bar at the present time, disturbed as they are by the slump in litigation, is that if people were more certain about what litigation was going to cost, they might be much more ready to undertake it. It is true that to-day litigants very often start litigation buoyed up with an optimistic belief that they are bound to win and that therefore the case is not going to cost them anything at all. Very few people, however, are really so feather-brained that they embark on litigation, either as plaintiff or defendant, without taking a good close look at what it is going to cost them if they lose. Their own solicitor may not be able to prophesy their own expenses exactly, but he can tot up the known commitments and, allowing for the possibility of a second or third day, arrive at maximum and minimum figures between which the final expense is likely to lie. What no solicitor can do is to estimate the expenditure of the other side ; to prepare his client for the worst, he usually makes an estimate on the basis that the opposition will conduct their case very expensively. The result is that he presents his client with such an utterly uncertain estimate that even when there is a valid case to take forward, the client settles out of fear of what the other side's bill may be if he loses.

There might at first be some opposition from clients if solicitors had to start telling them that, win or lose, the case was going to cost them money, but it is equally possible, and indeed probable, that more clients would be willing to commit themselves to a known and reasonably definite expenditure than are willing to commit themselves to the uncertainties involved in the present system.

The vexatious, malicious, stupid or crooked litigant must always require special treatment. Civil judges must have the power that criminal judges have to-day of awarding costs against a party in proper cases. A debtor who could but does not pay, ought to pay his creditor's costs, but in a very substantial body of important and justifiable litigation, it would be far healthier for the nation, and in the interest both of clients and lawyers, if our present system of punishing losers were swept away.

E. A. W.

THE TERRITORIAL SEAS AND FISHERIES DISPUTES—II

THE question of the base-line from which the territorial sea is measured came before the International Court of Justice in the Anglo-Norwegian Fisheries case in 1951. The case in outline was that Norway claimed that her system of delimiting her territorial sea, by reference to straight base-lines drawn between forty-eight points on her mainland and on the fringe of islands along the coast, was in accordance with international law. The U.K. claimed that the proper method was to follow the low water-mark by means of arcs of circles drawn with a radius of four miles from permissible base-points. (It is to be noted that for the purposes of this case the U.K. did not contest the Norwegian claim to a four-mile territorial sea.) In the case of bays, the U.K. claimed that the base-line should be drawn between the entrances to the bay at the point where the indentation ceased to have the configuration of a bay. By a majority, the court held that the " base-line " method employed by Norway was not contrary to international law and that the base-lines actually drawn were not contrary to international law.

This decision of the court quickly provoked considerable criticism and certainly had the effect of greatly increasing Norway's exclusive fishing limits. However, there can be little doubt that the exceptional nature of the Norwegian coastline weighed heavily with the court in approving the use of straight base-lines in this case, and it ought not to be cited as an authorisation of the base-line method in any case where the coastline is not of an extremely indented nature. This view is borne out by arts. 3 and 4 of the Geneva Convention, the former of which provides that as a general rule the normal base-line for measuring the breadth of the territorial sea is the low-water line along the coast. However, art. 4, which substantially reproduces the decision in the Fisheries case, provides that in localities where the coastline is deeply indented and cut into or there is a fringe of islands along the coast in its immediate vicinity, the method of straight base-lines joining appropriate points may be employed. But such base-lines may not depart to any appreciable extent from the general direction of the coast, and the sea areas

lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of inland waters. We may perhaps note that *in cases where straight base-lines may be used*, account may be taken, in determining particular base-lines, of economic interests peculiar to the region concerned, the reality and importance of which are clearly evidenced by a long usage. This Convention has not yet come into force, but these provisions would seem to give an accurate picture of the rules of customary international law on this topic.

It is to be noted that the judgment in the Fisheries case was probably the cause of Iceland adopting the straight base-line method, which she did in 1950 in respect of her northern coast and in 1952 in respect of all coasts. She also then claimed a four-mile limit, no doubt encouraged by the U.K.'s abstaining from contesting this limit in the Fisheries case. Previously, under a treaty with the U.K. of 1901, a three-mile limit, with a ten-mile closing line in bays, had been in force, but in 1951 Iceland claimed to terminate this agreement. The U.K. denied Iceland's claim to a four-mile limit and said that the Icelandic base-lines did not conform with several of the requirements laid down by the I.C.J. in the Fisheries case. One of these base-lines, across Faxa Floi, is sixty-six miles long and would cut off foreign trawlers from a very profitable fishing ground.

Width of territorial waters

The second question, that of the width of the territorial sea, is more difficult to answer with any confidence. Had it been asked fifty years ago, an answer of three miles would not have found many dissentient voices, although even then there were States who claimed a wider area. Thus the Scandinavian States have always claimed a four-mile limit, and certain Mediterranean States six miles. The position probably was that the three-mile limit was the general rule, but that the four-mile limit had obtained historical recognition in respect of the Scandinavian States, while an extension of the territorial sea beyond three miles was not in itself unlawful, provided that it was regarded as binding only upon those States which had formally accepted it.

At the present day, however, the position of the three-mile limit is more in doubt. Many States claim a greater breadth, sometimes with a contiguous zone in addition. There was enough opposition to the three-mile limit at the Hague Conference of 1930 to prevent its adoption, and opposition has since increased. The International Law Commission, in preparing its report for the Geneva Conference, recognised that practice was not uniform and considered that the breadth should be fixed by an international conference, being itself unable to reach agreement. It did, however, consider that international law did not permit an extension beyond twelve miles. Without taking any decision as to the breadth of the territorial sea up to that limit, it noted that many States had fixed a breadth greater than three miles and, on the other hand, that many States did not recognise such a breadth when that of their own territorial sea was less. The conference itself, as we have seen, reached no agreement.

We are left with the unsatisfactory position that there is no undisputed answer. Does a rule of customary international law cease to bind when many States unilaterally decide, in the face of protests from others, no longer to follow it? If it has done so in this case, has it been replaced, as some States say, by a rule that each State can fix its own limits, between three and twelve miles? Or is the matter no longer governed by a rule of law at all, leaving States free to decide the extent of their territorial sea unilaterally? The last solution must be rejected, but what of the first two? The present practice of States does on the whole fit the second, and if there had been no previous rule this would probably conclude the matter. But can the former rule be ignored? The answer, offered with some hesitation, is that it cannot, and that the present rule of international law is that of the three-mile limit. But a rule so much honoured in the breach is not a satisfactory one and the time has probably come for agreement on a new rule, for the present one creates many difficulties and circumstances have somewhat changed since it developed.

Until, however, that new rule is devised, the three-mile rule stands, and relations between States must be governed by it. At Geneva, the U.K. insisted that the starting point of the discussion could only be that the three-mile rule was the law now in force.

The Icelandic Government does not take this view. After the failure of the Geneva Conference on this point, Iceland claimed unilaterally extended fishery limits from four to twelve miles. In support she relied on the fact that many other States claim more than three miles of territorial sea, and on the Report of the International Law Commission cited above, finding there a statement that international law permitted a territorial sea of up to but not more than twelve miles. The Rapporteur of the Commission, however, had firmly denied at Geneva that this was so, and said that this was merely one of the opinions expressed to the Commission, which it neither approved nor disapproved. Reliance by Iceland on this point is therefore ill-founded. But the wider ground remains. As we have said, this is in strict law also unjustified. Therefore, the U.K.'s action in resisting a twelve-mile fisheries limit is in the writer's view lawful.

Yet it is not unreasonable that there should be some change in the law to cover genuine hardships which may be suffered by States which are very dependent on fishing. The present concept of the territorial sea is probably too rigid for modern conditions. There are few meritorious grounds for anything but a narrow territorial sea so far as freedom of navigation is concerned, for this is in every State's interests. But under the present law exclusive fishing rights can exist only in the territorial sea, and therefore the only way of increasing areas of exclusive fishing is to attempt to extend the territorial sea. But any extension also removes parts of the open sea from free navigation. Questions of fisheries, in fact, ought to be dealt with separately. It is submitted that in the case of fisheries a fair balance ought to be struck between the interests of the coastal State and other fishing States, and a clear distinction made between genuine conservation and selfish exploitation by the coastal State.

Fishery regulation

If there is serious overfishing, international regulation of the area on a *non-discriminatory* basis by interested States ought to be compulsory, as envisaged by the 1958 Geneva Convention on Conservation of the Living Resources of the High Seas. If such measures in fact prove ineffective and there is still not enough fish for all, then the coastal State deserves to have priority in respect of its reasonable requirements. The principle of the freedom of the seas should yield to that extent, and the coastal State be allowed a contiguous fishing zone. Other States, particularly those which have long fished the area, should still be allowed to fish to as great an extent as possible, for freedom of fishing should continue to be the general rule. Unilateral attempts to derogate from

it, particularly if made for selfish reasons, ought not to be countenanced.

It will not be easy to produce agreement on the question of fishery limits, but the sooner the present unsatisfactory position is improved the better for all concerned. In a fair compromise of a disputed matter some concessions have to be made on all sides, and it is to be hoped that States will act reasonably and responsibly at the coming Conference.

(Concluded) A. R.

Practical Conveyancing

PRACTICE AND COSTS

THE writer was not fortunate enough to be able to attend the recent Annual Conference of The Law Society, held at Scarborough. The editor of this journal has been good enough, however, to pass on to him some particulars of a most interesting suggestion. It was that people buying property on mortgage should be given a property certificate setting out full details of boundaries, responsibilities for repairs, rates and any restrictions and conditions. Apparently it was suggested that the certificate should be in a form prepared by The Law Society. It would not, of itself, create any rights but would tell the purchaser the main information he needs to know about his property. No doubt most members had in mind simple purchases of houses, but it may well be that something of the kind could be done in other cases.

The suggestion was limited to transactions in which the purchase money is raised by means of a mortgage, with the consequence that the title deeds are not held by the purchaser. The present writer is inclined to think, however, that if any such system were brought into operation it would very soon be found necessary to extend it to almost all cases of purchase. In the first place, in recent months many purchasers have raised money by means of bank loans and this trend is likely to continue. Very often solicitors do not know whether the title deeds will be deposited with a bank in the near future as security for a loan. Secondly, and even more important, if a purchaser who has taken out a mortgage holds a relatively simple certificate stating his rights, it seems most likely that other purchasers will wish to have a similar document, although any information which would be contained in a certificate can be found by careful examination of the documents of title. It is extremely difficult, and in some cases almost impossible, for a purchaser to ascertain his rights from an examination of them. Solicitors are so accustomed to handling documents of title, and so well aware of their meaning, that they can refer back to old deeds and abstracts and isolate the relevant passages with a good deal of speed and efficiency. On the other hand, only a very careful and intelligent layman can extract information he requires from most bundles of title deeds, and then only with some danger of error.

It is understood that the general opinion at the conference was that solicitors cannot reasonably be asked to do more work on the basis of the costs now fixed. Nevertheless, it seems to have been conceded that purchasers who never see the conveyance to them and the other deeds are put into a difficult situation.

One solution is to make a copy of the conveyance, which, in many offices, can now be done simply by photographic means. The copy can be sent to the purchaser when reporting completion of the purchase and mortgage. The writer does not feel, however, that this is an adequate solution. Boundaries, for example, are frequently fixed by earlier deeds and restrictive covenants may have been imposed many years ago. Similarly, many of the matters with which a purchaser is most likely to be concerned are ascertained only by examination of search certificates. We would think that the sort of information he requires is whether roads have been adopted and whether there are any outstanding charges, what is the allocation of the land on the development plan, and possibly even what are the relevant planning permissions.

For these and similar reasons we think that the only satisfactory solution to the problem, if it is sufficiently serious to demand some action, is for a form of certificate to be suggested by the Council of The Law Society. The writer is uncertain whether the Council propose to consider the question. As only those solicitors who were at the conference have had the opportunity of expressing an opinion on it, we invite any of our readers, particularly any who may have had practical experience of difficulties caused to purchasers, to let us have their views. It may well be that the general consensus of opinion will be against this suggestion. On the other hand, if there is appreciable support for it we will endeavour to prepare a draft certificate which we hope would be of some assistance to the Council of The Law Society in the event of their deciding to investigate the matter.

Conveyancing costs

The recent change of name from the *Manchester Guardian* to the *Guardian* is a proper recognition of the national circulation of this excellent newspaper. Nevertheless, we imagine that only a minority of our readers will have seen or heard of some correspondence in its columns early last month. The present-day emphasis on public relations is such that most solicitors will wish to be aware of current controversy on a matter which affects their work so directly.

The correspondence was initiated by a letter from Mr. J. F. Dooley, of Oldham, who mentioned the number of houses changing hands, estimated the average costs and asked: "Is it not time for a complete revision of our obsolescent legal requirements for the transfer of this form of real estate?" He pointed out that sales are frequent and that investigation of title has become more simple. After writing: "All that is necessary is the removal of the statutory compulsion on vendor and purchaser to employ legal representation," he made the customary comparison with a sale of a motor car. Mr. Dooley's final comment was: "Were house purchasers free to choose to act without legal representation, perhaps more realistic charges would appear."

It is immediately apparent to any solicitor, as was very soon pointed out in the correspondence, that Mr. Dooley's main attack is badly directed because there is no obligation to employ a solicitor on sale of a house or any other land. Solicitors will be pleased to know that a speedy and well prepared explanation by the Secretary of The Law Society

was published on 14th October. It was drafted in terms which could well be understood by a layman, and warned him against the many dangers. We have no desire to be unduly complacent and we hope in the near future to publish suggestions for reforms of the law which would go some way towards a simplification of conveyancing practice. Nevertheless, we have no hesitation in expressing the opinion that laymen very frequently make misleading statements by the dangerous practice of omitting relevant factors from their arguments. It is very easy to base an argument on what is called a simple case, forgetting that there is no means of knowing beforehand which may be a simple case, and overlooking the possibility that a particular example has afterwards appeared to be simple, merely because the proper precautions were taken. Therefore, we welcome the letter of the Secretary of The Law Society, which drew attention to such matters as planning restrictions on use, rights of light, support and way, questions of drainage, road charges and possible compulsory acquisition or demolition, in addition to the potential liabilities which are more usually understood, such as outstanding mortgages, and liability for rates and taxes.

It seems that the main issue in this correspondence has been dealt with. Mr. H. T. Horsfield, of York, suggested that the reform which Mr. Dooley asked for had been carried out substantially by the Land Registration Act. He wrote: "Once the property has been registered, the procedure for purchase and sale is very simple, being similar to that for stocks and shares." We cannot agree with this unduly sweeping claim for the benefits of registration, for the reasons provided by the Secretary. Mr. Horsfield stated that solicitors were reticent about the advantages of a system which would deprive them in part at least of a lucrative source of income. Our impression is that, in these days of staff difficulties, many solicitors find appreciable advantage in dealing with registered titles, as a result of the reduction in time spent on investigation and in clerical work; they do not appear to deplore any reduction in their costs. There is no doubt but that the system of registration of title is spreading, and the main limiting factor seems to be administrative.

The only other point of substance in this correspondence was a complaint about what seems to have been a fee for preparation and obtaining execution of a vacating receipt. We cannot understand what substance there can be in this or what alternative could be suggested. Incidentally, some writers drew attention to estate agents' charges, and one went so far as to point out the extent of the work and responsibility incurred by a solicitor and to make comparison between the scale fees.

J. GILCHRIST SMITH.

Landlord and Tenant Notebook

INTENTION AND DISCOVERY

PART II of the Landlord and Tenant Act, 1954, has, in its first five years, produced a considerable number of authorities on intention. In connection with s. 30 (1) (*f*) and (*g*), providing that a landlord may oppose an application for a new tenancy on the ground of intention to demolish, reconstruct, etc. (para. (*f*)), or of intention to occupy the holding for the purposes, etc., of a business to be carried on by him, or as his residence (para. (*g*)), it has been demonstrated that the intention must be genuine; firm, fixed and real; honest, present and real; real, fixed and settled; different judges have used different expressions, as was mentioned in the "Notebook" for 3rd April last (p. 266, *ante*). A good deal has been decided about how to manifest the intention; but what matters for the purpose of discussing the recent decision in *Re St. Martin's Theatre; Bright Enterprises, Ltd.* v. *Willoughby de Broke* [1959] 1 W.L.R. 872; p. 677, *ante*, is the corollary that "intention" connotes a reasonable possibility of being able to achieve.

The point was first made in different circumstances, though the issue was between landlord and tenant. In *Cunliffe* v. *Goodman* [1950] 1 All E.R. 720 (C.A.), a claim for dilapidations, the issue was whether the premises "would at or shortly after the termination . . . be pulled down" so that the tenant would escape liability by satisfying the requirement of the Landlord and Tenant Act, 1927, s. 18 (1). The plaintiff was shown to have more than toyed with the idea of demolition plus erection of a block of flats, but the building restrictions then in force and the possible cost of carrying out the scheme (not yet calculated) were such that she had, according to Cohen, L.J., reached no more than a provisional decision. Though the subsection never mentions the word "intend," the issue was regarded as one whether the plaintiff intended to pull down the buildings; Asquith, L.J.'s short judgment distinguished between intention and contemplation: the former "connotes a state of affairs which he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about by his own volition. *X* cannot, with any due regard to the English language, be said to 'intend' a result which is wholly beyond the control of his will."

This reasoning was applied in *Reohorn* v. *Barry Corporation* [1956] 2 All E.R. 742 (C.A.), in which tenants of a car park applied for a new tenancy and their landlords relied on an alleged intention to develop the site, granting a lease to a company. It might be that the necessary ministerial approval could be obtained; the development company had agreed to the proposed terms "in principle"; it was proposed to form a new company to take the building lease; and, as Denning, L.J., put it: "What the financial stability and backing of that new company will be, no one knows, or at all events, the court does not know," saying later: "A man cannot properly be said to 'intend' to do a work of reconstruction when he has not the means to carry it out. He may *hope* to do so; he will not have the *intention* to do so."

Relevance

The fate of a tenant's application for discovery when fixity of intention was in issue, which was the case in *John Miller (Shipping), Ltd.* v. *Port of London Authority* [1959] 1 W.L.R. 910; p. 832, *ante*, was discussed in the "Notebook" for 21st August (p. 652, *ante*); but it is clear that a landlord relying on s. 30 (1) (*f*) or (*g*) may be subjected to something like a means test if his ability is queried. This happened in *Re St. Martin's Theatre*, in which the landlord opposed an application on the ground, *inter alia*, that he intended to

conduct a theatrical business on the property. I may mention that it is the headnote which states the nature of the business.

Procedure summonses were taken out by each party, that of the tenants asking for disclosure and inspection of the landlord's income tax returns for the past three years, of his bank pass sheets, and of other documents relating to his financial position.

Own property

Danckwerts, J., refused to make the desired order, pointing out that normally the financial situation of the landlord was not a material issue in landlord-and-tenant transactions, and holding that he had but a limited discretion.

Part of the learned judge's approach to the question does seem open to criticism. The reasoning behind his " . . . as it is the landlord's own property, it must be rather unusual for it to be considered necessary to consider the landlord's financial abilities at all " is unexceptionable—when the reversioner is the freeholder, a tenant normally has sufficient security for the performance of the landlord's obligations—but what follows, " The only thing the court has to determine is whether the landlord genuinely intends to occupy the property and carry on there the business to which he refers," does appear to ignore the causal connection revealed by *Reohorn* v. *Barry Corporation, supra.* Again, the learned judge's " For one thing, the past income tax returns and pass books of the landlord do not have much to do with his future ability to carry on a business on his own property " might, it could be suggested, be equally sound without the " on his own property." And a description of the application as one for " a roving commission " and a " gross interference with the affairs of the landlord " may sound rather like the utterance of a *laudator temporis acti.*

"A" business

One would expect that the qualifications of the landlord and the nature of the business which the landlord " intended " to carry on on the holding might play a part in deciding whether he really intends or merely hopes to carry on that business. It is not, of course, absolutely necessary that he should have experience of the kind of business ; the paragraph says " a " not " his " business ; in *Reohorn* v. *Barry Corporation, supra,* Denning, L.J., referred to *Gilmour Caterers, Ltd.* v. *St. Bartholomew's Hospital Governors* [1956] 1 Q.B. 387 (C.A.), deciding that an intention to demolish and reconstruct (para. (*f*)) did not necessarily mean an intention to do the work oneself ; it could be done by a contractor or the grantee of a building lease : and there seems no reason why this should not apply to intention to carry on a business. Those who carry on the business of a theatre frequently do so, it is well known, with other people's money, and what moneys the landlord in *Re St. Martin's Theatre* had received in the past and how he had spent them does seem to be irrelevant to the question of ability ; whether such a landlord has a flair for finding backers might be more to the point.

As against this, it is also well known that theatrical business is apt to be speculative business. Possibly there might be less to be said for a tenant whose landlord intended to occupy the holding for the purposes of retailing hot cakes.

The landlord's application

The intention to carry on a business was not the only ground on which the landlord relied ; he had put forward, but abandoned, an intention to demolish and reconstruct ; but also put forward, and not abandoned, allegations that the tenants ought not be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenants' failure to comply with their repairing covenants (para. (*a*)), and that they ought not to be granted a new tenancy in view of other substantial breaches of their tenancy obligations, or for other reasons connected with their use or management of the holding (para. (*c*)). The question of lack of repair " and of similar matters " had been already referred to an official referee, who had reported dilapidations amounting to some £16,000 : the tenants considered the amount excessive, but, as Danckwerts, J., observed, the finding did indicate that there were breaches of covenant. (The fact that the theatre is functioning—" The Grass is Greener "—would not be inconsistent with this view.)

In these circumstances, an application by the landlord for discovery of the tenants' balance sheets and profit and loss accounts for the period during which they had held the lease was granted. One may, however, regret that, though the passage containing the decision on this point follows a reference to the breaches of covenant, it is couched in such wide terms that it may some day be argued that it is of universal application. " The financial position of a tenant who asks for a lease of property is always of the greatest materiality to the landlord, who as a rule is not prepared to let his property without being able to place some reliance upon the financial stability of the prospective tenant so that he will be likely to pay the rent and perform the covenants of the lease." This statement may some day be cited on behalf of a landlord who has no reason to complain of his tenant's past behaviour but who opposes an application for a new tenancy on some other ground. If that should happen the answer would be, I submit, that there is nothing in the subsection requiring a tenant to show ability to pay rent and perform covenants ; an application cannot be refused on account of instability, but the matter can be dealt with when it comes to settling the terms of the new tenancy, in determining which the court shall " have regard to . . . all relevant circumstances " (s. 35). The old Landlord and Tenant Act, 1927, s. 5 (2), before it came to specific grounds (in subs. (3) (*b*)), made the right to a new lease dependent upon the tribunal considering that such a grant was " in all the circumstances reasonable," and insisted on the applicant proving that he was " a suitable tenant " (subs. (3) (*a*)), the importance of which was illustrated by *G. C. & E. Nuthall* (1917), *Ltd.* v. *Entertainments & General Investment Corporation, Ltd.* [1947] 2 All E.R. 384 ; but there is no corresponding provision in Pt. II of the Landlord and Tenant Act, 1954.

R. B.

Personal Notes

Mr. PETER CARR, solicitor, of Leicester, was married on 24th October to Miss Valerie Pauline Nightingale Bromwich.

Mr. S. W. DEWES, solicitor, and clerk of Tamworth Rural District Council, was given a pen and pencil set to mark the occasion of his completion of twenty-one years in that position.

LEGAL AID AREA COMMITTEE : APPOINTMENTS

Mr. S. L. PENN, solicitor, of Coventry, has been appointed chairman of No. 6 (West Midland) Legal Aid Area Committee. Mr. F. S. LODDER, solicitor, of Henley-in-Arden, and Mr. J. H. HIGGS, solicitor, of Brierley Hill, have been appointed vice-chairmen.

HERE AND THERE

LOOKING GLASS

THE law reports are the mirror of life because, sooner or later, every sort of thing that human beings get up to has a sequel in the courts. One could write the social history of any given stretch of time in England entirely from the pages of the law reports. In newspaper reports, it is true, the mirror is sometimes a distorting mirror, because so many of the newspapers seem to regard themselves as funfairs or branches of the entertainment industry. But even the farce of a period has its own relation to reality. "Charley's Aunt" and "The Private Secretary" and "Dandy Dick" all lived in the reflected light of the England of their time, even if they did not represent photographic likenesses. Our newspapers supply us pretty freely with vignettes of the American way of life as seen through the courtroom windows. It would be interesting if something of the same sort could be done in relation to the Russian courts to show us just what sort of things it is that Russians quarrel about in public before their judges, what are their favourite ways of getting into trouble and what the courts do about it. One would like to know more about the Russian method of dealing with the indigenous version of the "Teddy Boy" by a short sharp spell of humiliating public labour with their friends invited to watch.

MANNER OF SPEAKING

BUT, for the present, let us make the most of the plentiful supply of American court news. English lawyers and United States lawyers are very fond of reminding one another (on festive reunions especially) that they share the joint heritage of the Common Law. Also (allowing for idiomatic ideosyncracies) they share something which might broadly be called the same language. But the uses to which we respectively put that language indicate remarkable divergences of mind and habit. It has just been reported that after the acquittal of a fifteen-year-old lad charged in New York with kicking an old man to death, a judge remarked that the trial was "ludicrous," but not so ludicrous as the "publicity seeker" who conducted it. The judge referred to, responding more forcibly in the same vein, is reported to have told him to "keep his filthy mouth shut." Apparently this style is almost *de rigeur* for public pronouncements in New York. In the course of a controversy about the size of policemen's truncheons, the New York City Police Commissioner has referred to the City Council as "a phoney bunch of political opportunists." Court procedure in the States rarely disappoints by a lack of vitality. Recently in a Cincinatti court the prosecutor asked the defendant, "Were you drunk, lady?" He then remembered that the charge against her was a failure to have her dog inoculated and apologised. "I'm in a rut, your Honour," he explained to the judge. "There are just too many cases of drunkenness these days." But apparently being drunk in charge of an uninoculated dog is not yet a criminal offence. Parenthetically, it is interesting to note that last year's output (and intake) of illicit liquor in the United States was 53m. gallons, or a quarter of the total liquor consumed. The "moonshining" industry, a hangover from the prohibition era and now surviving as the biggest tax-evading device, affords congenial employment to more criminals than any other racket, even dope trafficking.

THREE CASES

THREE more little exhibits in the peep-show of the American legal scene: A lady was recently charged at Los Angeles with assaulting a whole bus load of passengers. This the splendid woman had achieved by means of her garden hose. Her garden was just beside the bus terminal and the descending passengers were always throwing their used tickets on to her lawn. One day while she was spraying the grass a bus drew up. This time she was first in the field; she jumped on and hosed down the passengers. The next case concerns the magnificent discovery of an export clerk in an Ohio firm who has apparently discovered a means of making even detected embezzlement pay. He appropriated £133,000 of his firm's money and is now serving a sentence of seven years' imprisonment, but, being a man of taste and discrimination, he had invested the lot in the purchase of works of art. The court has ordered these to be auctioned, but, as it is confidently expected that the sale will produce a profit, the firm is to be repaid only what it has actually lost. The balance will return to the judicious connoisseur. The third case is that of a young safe-breaker recently arrested in Oregon. It was found that by means of a forged Press pass he had obtained admittance to a meeting at police headquarters where locksmiths were coaching detectives on the finer points of opening safes and locked doors. Said the interested intruder: "Those boys sure know their stuff and explain it well."

RICHARD ROE.

"THE SOLICITORS' JOURNAL," 5th NOVEMBER, 1859

ON the 5th November, 1859, THE SOLICITORS' JOURNAL reprinted a paper on legal education read by Mr. E. W. Field at a meeting of the Metropolitan and Provincial Law Association. In the course of it he said: "In my student days there was no such thing as a *qualification* (in the moral and mental sense of the word) required for an attorney. A man might become an attorney, as he still may (to the disgrace of the legislature, be it said, and of the Benchers also) become a barrister, without ever possessing himself of the slightest particle of legal or business knowledge. And many did so. Thanks to the Incorporated Law Society this disgrace was to a considerable extent taken away from our branch of the profession, so far as mere legal knowledge goes, some quarter of a century ago. But . . . the method then taken was of the crudest and most insufficient kind, very admirable as a first step . . . but most objectionable . . . as a permanent standpoint. A number of men fully occupied in the practice of large professional business were appointed examiners—certainly the only men who could be taken at this instant and as a stop-gap but not at all the men who I should expect to be active professors of a law university. No professional system was propounded nor any good plan for giving out the subjects for study or preparing the questions for examination . . . One day's examination, altogether in writing, was imposed on each candidate after his articles had expired. The law so established has remained without improvement ever since. As to that basis of general knowledge, on which special professional knowledge can alone be well built, no requirement was then made . . . But what do our students do? They don't begin to study the law and read in downright earnest *till the last few months of their time*. And what they do then is not a *real* attempt to learn their profession, but merely one to pass through the examination sieve. They probably go to a 'crammer.' They get a book of all the questions put in past years with answers . . . They grind in this."

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and, in general, full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note

Court of Appeal

COUNTY COURT: INTERLOCUTORY APPEAL: JURISDICTION OF REGISTRAR TO DEAL WITH PARTICULARS OF CLAIM

Cook *v.* Spanish Holiday Tours (London), Ltd.

Hodson and Harman, L.JJ. 22nd July, 1959

Interlocutory appeal from Westminster County Court.

The plaintiff brought an action in the county court against travel agents for damages for breach of contract, alleging that the agents had agreed to book accommodation for a honeymoon holiday for him and his wife at a specified hotel in Spain; that they had failed to book accommodation; and that in consequence the plaintiff and his wife were unable to stay at the hotel and damage was suffered thereby. The defendants admitted the agreement to book accommodation, stated that it had been duly booked, and denied liability. The plaintiff thereupon amended his particulars of claim under the County Court Rules, 1936, Ord. 15, r. 4, by substituting for the word "book" the words "provide and arrange" accommodation. The defendants asked for further and better particulars as to the meaning of "provide and arrange," but being dissatisfied with the particulars supplied, applied to the registrar of the county court, who held that the particulars were insufficient and struck out the plaintiff's amendment. On appeal by the plaintiff, the county court judge restored the amendment. The defendants appealed.

Their lordships stated that they had never before heard an appeal in an interlocutory matter from a county court and expressed surprise that no leave was required, since there could be no appeal on such a matter from the High Court without leave. Hodson, L.J., said that he supposed the broad principle applied that one could appeal from anything which was a matter of law, without leave. On the striking out by the registrar of the plaintiff's amendment on the ground that the particulars were insufficient, the court were referred to the terms of the County Court Rules, 1936, Ord. 7, r. 9. The court observed that the registrar had no jurisdiction to do what he had done unless the amendment was scandalous or an abuse of the process of the court.

HODSON, L.J., giving judgment, said that after the amendment substituting "provide and arrange" for the word "book," the real issue between the parties was whether all that the defendants agreed to do was to book a hotel, careless whether or not the accommodation was available, or whether they had agreed to go further and provide accommodation. It seemed to be agreed that nothing took place between the parties except an oral conversation, and the question for decision on the trial of the action would therefore be one of fact, namely, what was said in that conversation. The registrar, on seeing the particulars, had taken the view that the plaintiff was not entitled to amend in the way he had done, and had struck out—without jurisdiction, so far as his lordship knew—that part of the statement of claim which was objectionable to the defendants. In his lordship's view the county court judge had rightly reinstated the amended statement of claim, taking the view that as particularised by the plaintiff it was sufficient. The defendants were not entitled to particulars of what the plaintiff thought the words "provide" or "arrange" meant. The only particulars which he was bound to give were particulars of the contract and he could not be asked to go further than that. The issue of fact remained to be dealt with, but the interlocutory appeal—which, if successful, would have concluded the action in the defendants' favour—should be dismissed.

HARMAN, L.J., agreed.

APPEARANCES: *Michael Beckman* (*Saunders & Co.*); *Alan Lipfriend* (*Offenbach & Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law]

RATING: SECTION 8 RELIEF: SOCIAL WELFARE: ROYAL COLLEGE OF NURSING

St. Marylebone Metropolitan Borough Council *v.* Royal College of Nursing

Morris, Romer and Willmer, L.JJ. 27th October, 1959

Appeal from Queen's Bench Divisional Court on case stated by London Quarter Sessions Appeals Committee ([1958] 1 W.L.R. 95; 102 SOL. J. 71).

The Royal College of Nursing, an organisation incorporated by Royal Charter in 1928, claimed to be entitled to rating relief under s. 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, in respect of premises occupied by it at Henrietta Place, London, W.1, as an organisation admittedly not conducted for profit "whose main objects are charitable or otherwise concerned with the advancement of . . . education or social welfare." Quarter sessions found that the main objects were those specified in art. II (B) of its charter, as follows: (*a*) to promote the science and art of nursing and the better education and training of nurses and their efficiency in the profession of nursing; and (*b*) to promote the advance of nursing as a profession in all or any of its branches; that (*a*) was admitted to be charitable and that (*b*) was either charitable or otherwise concerned with the advancement of social welfare, both objects being complementary and directed to the single end of raising the standard of nursing for the benefit of the community rather than the promotion of the professional interests of nurses as an end in itself. The Divisional Court affirmed that decision. The rating authority, the St. Marylebone Metropolitan Borough Council, appealed.

ROMER, L.J., delivering the reserved judgment of the court, said that the first question for the court was whether object (*b*) was, in its context and in the light of the charter as a whole, a charitable object. The answer depended on whether the true view of the object was the advancement of nursing or the advancement of the interests of nurses. The difficulty of the question arose from the words in (*b*), "as a profession," for if they had been absent the object would clearly have been charitable as promoting "the relief of human suffering." For the rating authority it had been contended that as the interests of the sick were fully covered by object (*a*) which was admitted to be charitable, the only reasonable meaning to attribute to (*b*) was an intention to promote and safeguard the interests of those who administered the nursing. Though there was force in that submission, the relief of human suffering through nursing was not, in the court's view, covered in all its aspects by (*a*). For example, (*a*) did not cover the increase in the quality and range of services offered to the public or the enhancing of the number and standard of those joining the profession. The whole tenor of the charter was to promote the interests of the sick in all the ways that efficient and extensive nursing could achieve. It might well be that the improvement in the quality and range of the services which nurses gave would benefit the nurses in the way of "pay and conditions," as Donovan, J., had said in the judgment of the Divisional Court; but that resulting benefit to nurses was irrelevant for the purpose now in question, provided that the main object was to promote the advance of nursing. No doubt under that provision the college could (and did) take care of the interests of the nursing profession and its members, but it did not thereby cease to be an association with a charitable object because incidentally, and in order to carry out the charitable object, it was both necessary and desirable to confer special benefits on the members. In the court's view object (*b*) was the advancement of nursing and not the advancement of the nursing profession, and the college was accordingly entitled to the relief from rates under s. 8 on the ground that its main objects were charitable. The appeal should be dismissed. Leave to appeal to the House of Lords was granted on terms as to costs.

APPEARANCES: *J. P. Widgery*, Q.C., and *J. Blanshard Stamp* (*Sharpe, Pritchard & Co.*); *L. G. Scarman*, Q.C., *Eric Blain*, and *Michael Mann* (*Charles Russell & Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law]

Chancery Division

HOUSING: LICENSEE OF REQUISITIONED HOUSE AS STATUTORY TENANT: COMPENSATION PAYABLE BY LOCAL AUTHORITY TO OWNER

East Ham Corporation *v.* Ministry of Housing and Local Government

Danckwerts, J. 6th October, 1959

Adjourned summons.

On 6th June, 1955, the right to possession of a requisitioned dwelling-house occupied by a licensee of the Minister of Housing and Local Government vested in a local authority pursuant to the provisions of s. 1 of the Requisitioned Houses and Housing (Amendment) Act, 1955. On 28th January, 1956, the local authority served on the owner of the house a notice pursuant to s. 4 (1) of the Act inviting him to accept the licensee of the house as a statutory tenant in consideration of the payment of £91 5s. compensation. On 23rd March, 1956, that offer was accepted by the owner in the statutory form of acceptance. The licensee paid rent weekly so that (pursuant to s. 4 (2) (*b*) of the Act) the local authority's right to retain possession of the house ceased on 2nd April, 1956, when the licensee became the statutory tenant of the owner. On 2nd May, the local authority paid the compensation to the owner. The authority contended that the compensation was a payment falling to be made in the period ending with 31st March, 1956, within para. (*a*) of s. 10 (1) of the Act, so that the rate of contribution to be made by the Minister should be 100 per cent., and the Minister contended that it was a payment which fell to be made in the period after 31st March, 1956, and under para. (*b*) of the subsection the contribution should be 75 per cent.

DANCKWERTS, J., said that compensation under s. 4 (1) was for the loss of the right to vacant possession on the release of the dwelling, and the owner had parted with it when he accepted the invitation by the local authority. By his acceptance he lost the right to vacant possession on the release of the dwelling. If that were so, everything that the owner was required to do had been done and thereupon he was entitled to compensation for the right he had given up. In his lordship's view therefore, the transaction so far as the owner was concerned was complete on 23rd March, 1956, and the compensation became legally payable at that date. Accordingly, the decision must be in favour of the authority. Declaration accordingly.

APPEARANCES: *John Mills* (*Sharpe, Pritchard & Co.*, for *R. H. Buckley*, Town Clerk of East Ham); *Denys B. Buckley* (*Solicitor, Ministry of Housing and Local Government*).

[Reported by Miss PHILLIPA PRICE, Barrister-at-Law] **[1 W.L.R. 1013**

HOUSING: SMALL DWELLINGS: WHETHER LOCAL AUTHORITY ACCOUNTABLE TO SECOND CHARGEE OUT OF PROCEEDS OF SALE

Bishop *v.* Southgate Corporation

Danckwerts, J. 20th October, 1959

Adjourned summons.

In November, 1953, the plaintiff agreed to sell her freehold house to *C*, who obtained a loan of £1,800 from the defendant corporation on the security of a first charge on the premises, under the provisions of the Small Dwellings Acquisition Acts, 1899 to 1923. The plaintiff lent *C* the remainder of the purchase money, £450, on the security of a second charge on the premises. Completion of the purchase took place on 15th March, 1954, on which date the two charges were executed. *C* defaulted in the instalments payable to the defendants, who, on 14th February, 1958, put the house up for sale by auction under s. 6 (1) of the 1899 Act, but the reserve price of £1,850 was not reached. On 25th July, 1958, the defendants obtained an order for possession and proceeded to sell the house with vacant possession for £2,200. At that time the total amount of principal, interest, costs and expenses due to them was £1,905 3s. 5d. The defendants refused to account to the plaintiff, out of the surplus, for what remained due to her under the second charge, asserting that they were bound to retain it as a profit for their ratepayers. The plaintiff took out a summons to determine whether the defendants were liable out of the surplus to account to her for moneys due to her under the second charge.

DANCKWERTS, J., said that it seemed to him very remarkable that a proprietor should be entirely expropriated as was held in *In re Brown's Mortgage; Wallasey Corporation* v. *A.-G.* [1945] Ch. 167, without either the formality of a foreclosure action or the traditional protection afforded by the court of equity to a borrower who found himself in difficulty with regard to the repayment of a loan. It was still harder to expropriate a lender who had not failed to obtain foreclosure but had merely been deprived of repayment in the same way as the first mortgagee had been deprived of repayment. He, his lordship, did not think that it followed from the provisions of the Act that such a result would occur. It was quite plain from ss. 3 and 4 of the 1899 Act that a person having a charge might be a different person from the proprietor. There was nothing in the Act which required the chargee to be deprived of a chargee's rights to repayment by reason of the default of the proprietor who owed the money. The chargee's rights remained unless disposed of by due process of law, namely, possibly by the act of foreclosure. In the present case, therefore, the local authority were accountable to the plaintiff for any balance of the money which remained in their hands from the sale of the property after the satisfaction of their own claims and paying the amount of their principal, interest and costs of the charge. Declaration accordingly.

APPEARANCES: *G. B. H. Dillon* (*H. W. Pegden*); *D. C. Potter* (*Gordon H. Taylor*, Solicitor to the Southgate Corporation).

[Reported by Miss PHILLIPA PRICE, Barrister-at-Law]

Queen's Bench Division

ROAD TRAFFIC: DUTY OF DRIVERS AT PEDESTRIAN CROSSINGS: CROSSING OBSCURED BY MOVING VEHICLE: PEDESTRIAN HIT BY VEHICLE

Lockie *v.* Lawton

Lord Parker, C.J., Ashworth and Paull, JJ. 13th October, 1959

Case stated by Nottingham justices.

A trolleybus driver, while driving his trolleybus down a main road in Nottingham, approached a crossroad where there was a pedestrian crossing. There was on his offside a large lorry which was backing into a side street and which largely obscured his view of the crossing. Unknown to the trolleybus driver, an old man, partially blind and partially deaf, was making his way across the crossing. The driver did not see him until he got on to the crown of the road. He braked and tried to stop, but the near side of the trolleybus struck the man when he was about 1½ yards from the kerb. The trolleybus driver was charged with an offence under reg. 4 of the Pedestrian Crossings Regulations, 1954, for failing to give precedence to a foot passenger on the carriageway within the limits of the crossing, but the justices were of the opinion that there was no case to answer and dismissed the information. The prosecutor appealed.

LORD PARKER, C.J., said that the court, in *Gibbons* v. *Kahl* [1956] 1 Q.B. 59, had made it clear that under reg. 4 it was the duty of a motorist approaching a pedestrian crossing to drive in such a way that he could stop if there was a pedestrian whose presence on the crossing was masked from him by other traffic. It was true that in that case the vehicle which masked the crossing was a stationary car drawn up on the near side of the road, and the justices sought to distinguish the present case from *Gibbons* v. *Kahl* on that ground. In his lordship's view, that made no difference. The principle laid down in *Gibbons* v. *Kahl* was quite irrespective of there being any car on the road or a car being on one side of the road or the other. It might be that the justices here had had in mind and were influenced by the decision of this court in an earlier case, *Leicester* v. *Pearson* [1952] 2 Q.B. 668, where Devlin, J., had said that the duty imposed on a driver of a vehicle was to take reasonable steps to let the pedestrian have precedence. Whether reg. 4 imposed an absolute duty or a duty to take reasonable steps made no difference because what were or were not reasonable steps must be viewed in the light of the clear duty which arose from reg. 4, as laid down in *Gibbons* v. *Kahl*, to drive at such a speed that one could stop if there was in fact a pedestrian there, albeit he was hidden. The better approach of magistrates in these cases was to realise that the duty of drivers was laid down in *Gibbons* v. *Kahl* and to look upon *Leicester* v. *Pearson* as a very special case decided on its

own facts. There was a clear case to answer in the present case, and the case would be remitted to the justices with an intimation that they should hear and determine it.

ASHWORTH and PAULL, JJ., delivered concurring judgments.

APPEARANCES: *P. D. Cotes-Preedy* (*Sharpe, Pritchard & Co.*, for *T. J. Owen*, Nottingham); *Henry Newman* (*Geoffrey B. Gush & Co.*, for *Young & Pearce*, Nottingham).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law]

SOLICITOR: DISCIPLINARY COMMITTEE: ACCOUNTS

In re A Solicitor

Lord Parker, C.J., Cassels and Edmund Davies, JJ.

29th October, 1959

Appeal from the Disciplinary Committee of The Law Society.

The appellant, a solicitor, was charged before the Disciplinary Committee of The Law Society with breaches of the Solicitors' Accounts Rules and with professional misconduct in utilisation for his own purposes of money received on behalf of clients, serious delays in furnishing accounts and bills, and swearing two affidavits in proceedings in the High Court which were false and misleading. The appellant had been practising on his own account since his admission in 1929. There was never any suggestion that he had been guilty of dishonesty or had attempted to conceal the irregularities, which were patent on the inspection of his accounts. No client of the appellant's had lost any money through the matters complained of. Throughout the period in which the subject-matter of the charges arose, the appellant was suffering from ill-health and from family troubles. By their findings and order dated 23rd April, 1959, the Disciplinary Committee found the charges proved and ordered that the appellant be struck off the Roll.

LORD PARKER, C.J., said that there had been a cash deficiency on the solicitor's clients' account of about £1,000, which however had soon after been made up by a transfer of money from the solicitor's wife's account. His lordship found it unnecessary to go into details of how the deficiency arose. A cash shortage of this nature inevitably meant that a solicitor had spent a client's money for purposes other than those of the client. Public confidence in the profession would be shaken if such conduct were tolerated. His lordship said that the charge of misconduct in being guilty of delays in providing accounts and bills of costs was amply justified, but that in respect of one of the two affidavits, even if there was any falsity, he could not attach any importance to the matter; it was not clear what the Disciplinary Committee had in mind in their finding. The other affidavit was false, and it was bound to be a serious matter for a solicitor to make such an error in High Court proceedings. Finally there had been the transfer from the clients' account to the solicitor of £1,100 belonging to a client. At first sight this had seemed to his lordship a most reprehensible transaction, but it now appeared that the appellant had every reason to believe that his client owed him at least £1,500 in costs, and this exonerated him from moral blame. His lordship therefore attached no importance to the finding of the Disciplinary Committee on this point. His lordship was satisfied that the matters on which the court upheld their findings justified the penalty inflicted. He wished to emphasise, as the Committee had emphasised, that no solicitor could escape a severe penalty, indeed striking off the Roll, simply by showing that there had been no dishonesty and no concealment, and that no client had suffered.

CASSELS and EDMUND DAVIES, JJ., delivered concurring judgments.

On an application to continue a suspension of the Committee's order pending an appeal, Lord Parker, C.J., said that it was a serious matter for the public if a solicitor who had been properly struck off continued to practise. The suspension would continue for ten days, and if by then notice of appeal had been given and the appeal set down, the suspension would continue until the appeal was heard.

APPEARANCES: *John Foster*, Q.C., *Paul Sieghart* and *Alec Grant* (instructed by the appellant); *L. G. Scarman*, Q.C., and *Peter Webster* (*Hempsons*).

[Reported by GROVE HULL, Esq., Barrister-at-Law]

Vacation Court

HUSBAND AND WIFE: LEAVE REQUIRED BEFORE FILING DIVORCE PETITION: NO JURISDICTION TO GRANT INJUNCTION UNTIL PETITION FILED

Winstone *v.* Winstone

Winn, J. 17th September, 1959

Motion.

A wife who had been married for less than three years sought leave by originating summons, pursuant to s. 2 of the Matrimonial Causes Act, 1950, and r. 2 of the Matrimonial Causes Rules, 1957, to present a petition for the dissolution of the marriage. While the decision on her summons stood adjourned she applied to the Vacation Court for an injunction to restrain her husband from interfering with her occupancy of the matrimonial home. The court considered the preliminary question as to its jurisdiction to make orders affecting the general matrimonial relations of parties when no petition had yet been, nor could be, filed.

WINN, J., said that s. 2 of the 1950 Act and the relevant Matrimonial Causes Rules of 1957 showed that Parliament and the Rules Committee both intended that the court should lean in favour of any possibility of reconciliation between persons who had been married to one another for less than three years. The question which troubled his lordship was whether the court had, before the filing of a petition for divorce, become so seised of the control of the matrimonial relations of these two parties that the court had jurisdiction to grant the relief asked for. It was plain that a matrimonial cause was commenced by the filing of a petition which was before the court; and in the special circumstances where an individual was required by some statutory provision to obtain leave before commencing an action, that action could not be regarded as having been commenced until, with the leave of the court, a writ had been issued. The provisions of s. 45 of the Supreme Court of Judicature (Consolidation) Act, 1925, provided that "the High Court may grant . . . an injunction . . . in all cases in which it appears to the court . . . convenient so to do." Those words, in his lordship's view, were to be construed as limited to the granting of an injunction ancillary to and comprised within the scope of the substantive relief sought in the proceedings in which the application for the injunction was made. Here the pending proceedings had as their only object the obtaining of the leave of the court to file a petition within three years. Once that leave had been obtained, the whole matrimonial relations of the parties would be the subject-matter of any petition filed; but his lordship could not accede to the submission that the Divorce Court had jurisdiction arising from the pendency of the originating summons enabling it to make orders affecting the general matrimonial relations of the parties. Just as Parliament had enacted that, without obtaining the leave of the court, a wife not yet married for three years could not commence proceedings for dissolution of the marriage, so it was part of the intention of Parliament that the Divorce Court should not, before such leave had been obtained, entertain applications of this kind in less time than that indicated, save in the case of a petition for judicial separation which was not affected by that parliamentary prohibition. On the preliminary issue his lordship could not accept jurisdiction to entertain the present application for an injunction.

APPEARANCES: *David Hunter* (*Kenneth Brown, Baker, Baker*); *D. Armstead Fairweather* (*A. E. Hamlin, Brown, Veale & Twyford*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 660**

Court of Criminal Appeal

CRIMINAL LAW: MURDER: DIMINISHED RESPONSIBILITY: DIRECTION TO JURY

R. *v.* Walden

Hilbery, Havers and Thesiger, JJ. 30th July, 1959

Application for leave to appeal against conviction.

The appellant was convicted of capital murder by shooting. At the trial, the defence put forward was that he was suffering from diminished responsibility within the meaning of s. 2 of the Homicide Act, 1957. The judge caused to be prepared and handed to the jury a copy of the section, and directed the jury that it was for them to say whether upon the evidence the

applicant had brought himself within the section. In the course of his summing-up the judge referred to the definition of insanity in *M'Naghten's Case* (1843), 10 Cl. & Fin. 200, and continued: "There are some cases, you may think, where a man has nearly got to that condition, but not quite, where he is wandering on the border-line between being insane and sane, where you can say to yourself, 'Well, really, it may be he is not insane, but he is on the border-line, poor fellow. He is not really fully responsible for what he has done.' Now, you may think, and it is entirely a matter for you, that that is what is meant by those words in the Act of Parliament, 'such abnormality as substantially impairs his mental responsibility' . . ." The applicant sought leave to appeal against his conviction on the grounds, *inter alia*, that the judge had misdirected the jury in the following ways: (1) attempting to redefine the meaning of "a person suffering from diminished responsibility," which Parliament had already defined in s. 2 (1); (2) misconstruing the words of the section in the passage of the summing-up quoted above; (3) directing the jury that if they disagreed with his construction of the subsection they could ignore it.

HILBERY, J., delivering the judgment of the court, said that the decision of the court in *R.* v. *Spriggs* [1958] 1 Q.B. 270 must be examined in the light of the argument addressed to it. In that case it was contended that the judge did not give a sufficient direction as to the meaning of the expression "abnormality of mind" or "mental responsibility," and did not distinguish to the jury between emotional instability and gross personality disorder. By its judgment this court had rejected the appellant's contention that there was any duty upon the judge to define or redefine "abnormality of mind" or "mental responsibility," and held that it was a sufficient direction if he drew the attention of the jury to the exact terms of the section and told them that it contained the tests which they were to apply, and left it to them to decide whether on the evidence the case came within the section or not. This was all that *R.* v. *Spriggs* decided. Though it was a sufficient direction if the judge drew the attention of the jury to the exact terms of the section, it was not a misdirection if he pointed out to the jury the sort of things which they could look for to decide whether on the facts the case came within the section. The words used by the judge were not a misdirection. The judge was right in directing the jury that it was a question for them and not for him whether the applicant brought himself within the section or not. Accordingly, the application would be dismissed.

APPEARANCES: *H. C. Scott* and *J. F. S. Cobb* (*J. W. Fenoughty, Dunn & Co.*, Rotherham); *G. S. Waller*, Q.C., and *J. B. Willis* (*Director of Public Prosecutions*).

[Reported by GROVE HULL, Esq., Barrister-at-Law] **[1 W.L.R. 1008**

ADDENDUM

Gladstone *v.* **Bower**, p. 835, *ante*. Under appearances, after *Theodore Goddard & Co.*, add "for *Llewellyn-Jones & Armon Ellis*, Rhyl."

WEEKLY LAW REPORTS: REFERENCES

The following page numbers can now be given in respect of notes of cases published on the dates indicated below:—

31st July, 1959:—
Albert D. Gaon & Co. *v.* Société Interprofessionelle des Oleagineux Fluides Alimentaires .. .. 3 W.L.R. 622

14th August, 1959:—
Inland Revenue Commissioners *v.* Collco Dealings, Ltd; Same *v.* Lucbor Dealings, Ltd. .. .. 1 W.L.R. 995

9th October, 1959:—
Associated Newspapers, Ltd., *Ex parte* .. 1 W.L.R. 939

16th October, 1959:—
Ponoka-Calmar Oils, Ltd., and Another *v.* Earl Wakefield and Others .. .. 3 W.L.R. 631

23rd October, 1959:—
Sales-Matic, Ltd. *v.* Hinchcliffe .. .. 1 W.L.R. 1005

30th October, 1959:—
Grainger *v.* Grainger and Clark .. .. 3 W.L.R. 642

REVIEWS

In Some Authority. The English Magistracy. By FRANK MILTON. pp. 168. 1959. London: Pall Mall Press, Ltd. 16s. 6d. net.

This book, which is by one of the metropolitan magistrates, gives the history of magistrates with particular emphasis on stipendiaries and then describes the work of a typical metropolitan court and a typical country court. It also describes two juvenile courts and gives a full account of procedure and sentencing. In our opinion, this is the best book that has appeared for the instruction of magistrates. It is extremely interesting and interspersed with wit and amusing tales about magistrates of former years. We learned with interest that one metropolitan stipendiary magistrate was also Poet Laureate. This is an excellent book to give to any newly-appointed magistrate for him to obtain a picture of the work of the courts, and many lawyers will read it with interest for its account of the history of the magistracy. The law stated appears to be accurate and the only point to which we would refer is the absence of a reference to the power to order compensation under the Forfeiture Act, 1870.

In relation to the practice of swearing Sikhs, readers of the book might like to be reminded of the Current Topic at p. 622, *ante*.

The Town and Country Planning Act, 1959. Edited with a Guide and Index by the RT. HON. LORD MESTON, of Lincoln's Inn and the Middle Temple, Barrister-at-Law. pp. (with Index) 52. 1959. London: The Property Owners Protection Association, Ltd. 7s. 6d. net.

This book is not intended, the preface says, to be an exhaustive analysis of every provision of the Town and Country Planning Act, 1959, but merely to explain the alterations in the law and to state the object and effect of this legislation in simple language. It is a very good small guide to the Act, though, however simple the language, no guide on such a subject can be easy reading. There are signs in places that the book has perhaps been hastily prepared. For example, on p. 31 it is said that s. 17 of the Town and Country Planning Act, 1947, relates to applications to determine whether proposed operations or changes of use involve development or require planning permission, which is correct, and imposes an obligation on the planning authority to purchase land on refusal of permission in certain cases; this s. 17 certainly does not do: s. 19 is the purchase notice section. On p. 25, referring to the right to additional compensation on the grant of a new planning permission within five years after an acquisition of land, it is said that "the right of such compensation cannot be transferred by an assignee between the parties (s. 18 (5))." This wording is perhaps a little odd, and it is doubtful whether the substance is correct. Paragraph 22 of Ministry of Housing and Local Government Circular No. 48/1959, which may well have been issued after the main part of the book had gone to press, says that the circumstances covered by s. 18 (5) would, the Minister is advised, include an assignment of the right.

The book achieves the object it has set itself, and readers will find it useful for drawing their attention to, and explaining in a short space, the complicated provisions of the new Act.

Some Pillars of English Law. By J. DUHAMEL and J. DILL SMITH. Translated and revised by R. HALL. pp. xiv and (with Index) 178. 1959. London: Sir Isaac Pitman & Sons, Ltd. £1 net.

For those who never do, but feel they ought to, read an occasional academic law book, this volume would be an excellent beginning. "Academic" describes only its lack of similarity to the books a solicitor *has* to read. Just once in a while, it is as

well to stand back and see what one is engaged with; that wonderful, lopsided, vigorous, mysterious growth—the English legal system.

Maître Jean Duhamel and Mr. J. Dill Smith have viewed the system from across the Channel, and their comments and conclusions could be as valuable to English lawyers and legislators as to their French counterparts, for whom the work was primarily intended. " Aunt, look what Bedingfield has done to me ! " could be exclaimed repeatedly in the ear of any English lawyer who may be entirely pleased with the English rules of evidence. The authors point out other corners of the system where a little French polishing is called for; but on the whole they are frankly, but not uncritically, envious of the Anglo-Saxon legal tradition. The English legal profession is also held up for examination in a new light, and an almost imperceptible Gallic shrug indicates the fate awaiting Q.C.'s who live to wish that they had never taken silk.

The translation is well done, but not so as to hide the French train of thought. Thus, a scholarly account of the English police system commences with a picture of policemen " in their ovoid helmets . . . going about their duties with imperturbable phlegm." This is just the stuff for a jaded articled clerk.

This reviewer, as a jaded principal, feels himself all the better from completing a most pleasant task. As a matter of no importance, *Hulton* v. *Jones* is wrongly indexed. As a matter of great importance, English law is something in which to take pride; and anyone who considers such a remark to be pointless will doubtless avoid reading such a book as this.

Oyez Practice Note No. 38: The Licensing Guide. An outline of the law and practice concerning intoxicating liquor licences. Second Edition. By MICHAEL UNDERHILL, of Gray's Inn and the Oxford Circuit, Barrister-at-Law. pp. 45. 1959. London : The Solicitors' Law Stationery Society, Ltd. 6s. 6d. net.

This is the second edition of an Oyez Practice Note which, we are sure, has been found useful by many solicitors and others concerned with the licensing trade. It is a concise account of the liquor licensing system and of the procedure for obtaining and transferring licences. The second edition has been brought out to incorporate the changes made by the Finance Act, 1959, and a short note has been added in appendix V on preparing an application for a new licence. The advice given in the book is sound and helpful and it can be confidently recommended to practitioners concerned with licensing matters both for the applicant and against him. We draw attention to two points in the text. First, Mr. Underhill does not say that an occasional licence cannot be granted for Sunday, and, second, we regret the omission of any reference to the useful s. 29 of the Licensing Act, 1953.

County Court Notebook. Eighth Edition. By ERSKINE POLLOCK, LL.B., Solicitor. pp. 32. 1959. London: The Solicitors' Law Stationery Society, Ltd. 2s. 6d. net.

The layout of this useful little aide-memoire to county court procedure is simple and its references to Acts and Rules clear, comprehensive and accurate. It will doubtless be found not only on the desks of litigation clerks, but also in the pockets of many of their principals.

The Chief. By ROBERT JACKSON. pp. (with Index) 349. 1959. London : George G. Harrap & Co., Ltd. £1 1s. net.

Lord Hewart was a powerful, impressive and controversial figure as Lord Chief Justice of England, a self-made man of an unusual type, for, the son of a Lancashire draper, he was also a brilliant classical scholar. Before a late call to the Bar he was a working journalist. He was a brilliant and persuasive advocate and a highly effective Parliamentarian, Attorney-General in Lloyd George's Coalition Government and one of its main pillars. As a judge he had two aspects. He was alert, aggressive and tenacious in his public denunciations of bureaucratic encroachments on the functions of the judiciary. On the Bench he was intelligent and acute but he was much criticised for failure in point of impartiality. He would take a decided line from which it was very hard to divert him and his strong personality and persuasive tongue generally brought juries round to his way of thinking. In private he was much appreciated as a wit and a good companion. This biography fully and faithfully records his character and life, episode by episode, case by case. The cases with which he dealt as counsel and judge are competently condensed. Some of the more sensational episodes in Hewart's career are related with commendable frankness. It is well known that considerable manœuvres and counter-manœuvres marked his appointment as Chief Justice and the picture of the political scene at that time is decidedly disedifying. We know, of course, that the political world in its very nature must always be a cockpit of rival ambitions, but there are periods at which one could wish them less blatant. Another curious and rather disturbing episode was the occasion when Hewart, believing that he detected in a discreet little clause in a Bill affecting the seniority in the Court of Appeal, the fruit of a conspiracy to slight his friend, Lord Justice Slesser, leapt violently to his defence. The result was a most undignified squabble among the law lords on the floor of the House of Lords. This book clearly aims at a popular circulation, but without sensationalism. In fairness to the more critical readers, one should add that the writing, though competent, is not distinguished.

Lawyer, Heal Thyself! By BILL MORTLOCK. pp. 239. 1959. London : Victor Gollancz, Ltd. 15s. net.

The chief value of this book is the glimpse which the author gives of the way in which a few solicitors spend all their time and all but a few fortunates spend some of their time. The publishers describe it as " a remarkably vivid picture of a solicitor's life " ; vivid it is, but the life is not typical. Those contemplating a career in our profession should not assume that they will have to live in an atmosphere of hopelessness and cynicism contemplating the wrecks of human lives. It is a pity that the book should be overlaid as it is by depression. The author has many wise things to say and says them well. " It's easy to get a divorce against a man who bashes his wife. It's easy when the man and woman openly live loosely. But the law makes no provision for the quiet destruction husbands and wives practise on each other. The wounds don't show." The Royal Commission on Marriage and Divorce took much longer to reach the same conclusion. Solicitors can read this book with enjoyment and put it into perspective. There is a danger that others, though they will enjoy it just as much, may get a one-sided view.

THE RUTHLESS LORD CHIEF JUSTICE

The sinister Lord Chief Justice Jeffreys will be resurrected for one hour on Friday, 13th November, in a further programme of the B.B.C.'s series " The Verdict of the Court." The reconstructed trial is that of Lady Alice Lisle, a widow of seventy-one, charged with harbouring rebels. It can be heard in the Home Service at 7 p.m.

CUMBERSOME ADDRESSES AND TITLES

Last November we discussed in our columns the possibility of shortening unwieldy addresses and titles of certain Ministers of the Crown (see 102 SOL. J. 832). It was suggested that official departments could set the example in realising that ambition. On 21st October, 1959, two Orders in Council came into operation changing the style and titles of two Crown Ministers, viz., the Minister of Aviation Order, 1959 (S.I. 1959 No. 1768) and the Minister of Labour Order, 1959 (S.I. 1959 No. 1769). The object of the first-mentioned Order is to combine under one Minister the Government's functions relating to aviation and aircraft production which were originally divided between the Ministry of Transport and Civil Aviation and the Ministry of Supply. The Order provides for the transfer to the Minister of Supply of the civil aviation functions of the Minister of Transport and Civil Aviation, and changes the style and titles of those Ministers respectively to " Minister of Aviation " and " Minister of Transport." The Minister of Labour Order, 1959, provides for the transfer to the Minister of Labour of the functions of the Minister of National Service. The changes will no doubt help considerably the workings of the Post Office and those persons who correspond regularly with these Ministries. It would be well if before long all long-winded addresses—and this does not apply to Government departments only—were shortened.

IN WESTMINSTER AND WHITEHALL

HOUSE OF COMMONS

A. Progress of Bills

Read First Time:—

Air Corporations Bill [H.C.] [29th October.

To increase the borrowing powers of the British Overseas Airways Corporation and the British European Airways Corporation.

Betting and Gaming Bill [H.C.] [30th October.

To amend the law with respect to betting and gaming and to make certain other amendments with a view to securing consistency and uniformity in, and facilitating the consolidation of, the said law and the law with respect to lotteries ; and for purposes connected with the matters aforesaid.

Cinematograph Films Bill [H.C.] [28th October.

To amend the Cinematograph Films Acts, 1938 and 1948.

Expiring Laws Continuance Bill [H.C.] [28th October.

To continue certain expiring laws.

Foreign Service Bill [H.C.] [28th October.

To amend the law as to the superannuation benefits which may be granted to or in respect of certain members of Her Majesty's foreign service.

Local Employment Bill [H.C.] [28th October.

To make provision to promote employment in localities in England, Scotland and Wales where high and persistent unemployment exists or is threatened, and to make consequential provision as respects the industrial estate companies ; to amend subsection (4) of section fourteen of the Town and Country Planning Act, 1947, and subsection (4) of section twelve of the Town and Country Planning (Scotland) Act, 1947 (industrial development certificates); and for purposes connected with the matters aforesaid.

Lord High Commissioner (Church of Scotland) Bill [H.C.] [28th October.

To increase the allowance payable to Her Majesty's High Commissioner to the General Assembly of the Church of Scotland.

Marshall Scholarships Bill [H.C.] [28th October.

To increase the number of Marshall scholarships which may be provided in each year.

Sea Fish Industry Bill [H.C.] [28th October.

To increase the aggregate amounts of grants made in pursuance of schemes under sections one and five of the White Fish and Herring Industries Act, 1953, and section three of the White Fish and Herring Industries Act, 1957, and otherwise to amend the provisions as to schemes under those Acts; to authorise measures for the increase or improvement of marine resources; to make further provision for regulating the catching of sea-fish and for licensing fishing-boats; and for purposes connected with those matters.

B. Questions

Merchandise Marks Acts (Prosecutions)

Mr. Maudling said that the figures for prosecutions under the Merchandise Marks Acts were: fourteen in 1955; twenty-four in 1957; fifteen in 1958; and nine up to 28th October, 1959. He pointed out that the figures related to cases heard and decided. [30th October.

STATUTORY INSTRUMENTS

Act of Sederunt (Rules of Court Amendment No. 5), 1959. (S.I. 1959 No. 1797.) 5d.

Argyll County Council (Lochan Iliter, Luing) Water Order, 1959. (S.I. 1959 No. 1784.) 5d.

Carriage by Air (Non-International Carriage) (United Kingdom) (Amendment) Order, 1959. (S.I. 1959 No. 1770.) 5d.

Foreign Compensation (Egypt) (Determination and Registration of Claims) (Amendment) Order, 1959. (S.I. 1959 No. 1773.) 5d.

Foreign Marriage (Amendment) Order, 1959. (S.I. 1959 No. 1774.) 5d.

Gambia (Electoral Provisions) Order in Council, 1959. (S.I. 1959 No. 1771.) 5d.

London-Bristol Trunk Road (Maidenhead By-Pass) (Revocation) Order, 1959. (S.I. 1959 No. 1763.) 4d.

London-Bristol Trunk Road (Slough By-Pass) (Revocation) Order, 1959. (S.I. 1959 No. 1764.) 4d.

Metropolitan Magistrates' Courts (Domestic Proceedings) Order, 1959. (S.I. 1959 No. 1775.) 4d.

Draft **Ministry of National Service** (Dissolution) Order, 1959. 5d.

Nigeria (Constitution) (Amendment No. 3) Order in Council, 1959. (S.I. 1959 No. 1772.) 1s. 8d.

Poultry and Hatching Eggs (Importation) Amendment Order, 1959. (S.I. 1959 No. 1788.) 5d.

Poultry Carcases (Landing) Amendment Order, 1959. (S.I. 1959 No. 1787.) 4d.

Stopping up of Highways Orders, 1959:—
County of Chester (No. 23). (S.I. 1959 No. 1758.) 5d.
London (No. 46). (S.I. 1959 No. 1759.) 5d.
County of Middlesex (No. 6). (S.I. 1959 No. 1765.) 5d.

Draft **Teachers' Superannuation** (Royal Air Force Education) Amending Scheme, 1959. 5d.

Draft **Trafalgar Square** Regulations, 1959. 5d.

Wages Regulation (Ready-made and Wholesale Bespoke Tailoring) Order, 1959. (S.I. 1959 No. 1778.) 8d.

Watford and South of St. Albans-Dunchurch (Connecting Roads) Scheme, 1959. (S.I. 1959 No. 1789.) 6d.

SELECTED APPOINTED DAYS

October

21st Minister of Aviation Order, 1959. (S.I. 1959 No. 1768.)
Minister of Labour Order, 1959. (S.I. 1959 No. 1769.)

24th Carriage by Air (Non-International Carriage) (United Kingdom) (Amendment) Order, 1959. (S.I. 1959 No. 1770.)
Foreign Compensation (Egypt) (Determination and Registration of Claims) (Amendment) Order, 1959. (S.I. 1959 No. 1773.)
Foreign Marriage (Amendment) Order, 1959. (S.I. 1959 No. 1774.)

29th Legitimacy Act, 1959.
Metropolitan Magistrates' Courts (Domestic Proceedings) Order, 1959. (S.I. 1959 No. 1775.)

31st National Insurance (Contributions) Amendment (No. 2) Regulations, 1959. (S.I. 1959 No. 1803.)

November

1st Building Society (Amendment) Rules, 1959. (S.I. 1959 No. 1597.)

Obituary

Mr. Henry Vaughan Edwards Jones, solicitor, of Swansea, died on 27th October. He was admitted in 1919.

Mr. W. A. Fearnley-Whittingstall, Q.C., died on 28th October, aged 56. He was called to the Bar in 1925. In 1957 he was appointed Recorder of Leicester, the position he held at his death. He was Recorder of Grantham and deputy chairman of Bedfordshire Quarter Sessions in 1946, and Recorder of Lincoln in 1954.

Honours and Appointments

Sir (Alfred) John Ainley, M.C., Chief Justice, Eastern Region of Nigeria, has been appointed Chief Justice, Unified Judiciary of Sarawak, North Borneo and Brunei, in succession to Sir Ernest Williams, who has retired.

Mr. Francis Neville Vaughan Meredith, clerk to the Abercarn Urban District Council, Monmouthshire, has been appointed clerk to Hawarden Rural District Council.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the " Points in Practice " Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Trespass—Cattle causing Damage to Army Camp Property

Q. We have been consulted by the commanding officer of the local army camp. For some months past a herd of Friesian heifers have been trespassing on the camp property and have done considerable damage. Although extensive inquiries have been made, the camp authorities were unable to ascertain to whom the cattle belonged. We advised that if the cattle should enter upon the camp again and cause damage they should exercise their right of distress damage feasant. On the night following our advice, the cattle again entered the camp and did considerable damage and they have accordingly been impounded in a field situate close to the camp. On the day following the impounding the owner of the cattle was discovered. The owner is a lady who lives some distance away and was merely grazing her cattle on land adjoining the camp. The total damage has been assessed at approximately £160, £15 of which relates to gardens attached to married quarters—the damage being destruction of vegetables and flowers. The remainder of the damage is on the camp itself and consists of damage to lawns, flowers, seed-beds and shrubs. If the owner of the cattle does not pay the amount of damage claimed, what remedy is there available? If an action for damage and trespass is necessary, can it be brought by the commanding officer on behalf of the occupants of the various married quarters or must each individual occupant bring an action for the amount of damage he has sustained? For how long can the camp authorities continue impounding the cattle? Have they any right to sell the cattle if the owner will not make the required recompense?

A. (i) If the owner does not tender amends, the remedy is an action for trespass (see Halsbury's Laws of England, 3rd ed., vol. 1, p. 676, para. 1288). (ii) Assuming that the occupants of the various married quarters have sufficient possession of the land to entitle them to maintain an action for trespass (see *Burt* v. *Moore* (1793), 5 Term Rep. 329, and Salmond on Torts, 12th ed., pp. 164 to 165), we doubt whether they and the commanding officer may be joined as plaintiffs in one action as no " common question of . . . fact would arise " (R.S.C., Ord. 16, r. 1); *cf.* *Drincqbier* v. *Wood* [1899] 1 Ch. 393. (iii) The cattle may be detained until such time as compensation is paid by the owner, but they should be released before an action for trespass is commenced (*Boden* v. *Roscoe* [1894] 1 Q.B. 608). (iv) A person who detains animals is not entitled to sell them: see Salmond on Torts, 12th ed., p. 775.

Administration of Estates—Second Wife of Deceased Still Survivor in Spite of Her Remarriage

Q. *L* married and there was one child of the marriage. *L's* wife died and *L* remarried and there is another child of the second marriage. *L* died intestate in December, 1957, leaving only some post-war credits. *L's* second wife remarried a week after his death and she and her husband are still living. *L* and his wife were living apart at the date of his death and he paid maintenance for the child only under a maintenance agreement. We have been asked to advise the daughter of *L's* first marriage whether she is entitled to the post-war credits. It appears to us that *L's* second wife must be entitled. Section 46 (1) (i) of the Administration of Estates Act, 1925, says: " If the intestate leaves a . . . wife (with or without issue) the surviving . . . wife shall take, etc." Is a woman who had remarried still the " surviving wife " of the intestate for this purpose? The point seems elementary, but does not appear to be answered in the text-books.

A. The second wife is entitled to the post-war credits. The fact that she remarried shortly after *L's* death does not affect her status as the surviving wife of *L*.

Damages—Cost of Hire of Substitute Vehicle—Deduction for Wear Saved

Q. *A*, a corn merchant, has had one of his lorries damaged through the negligent driving of *B*. *A's* lorry is off the road for fourteen days whilst being repaired and *A* has to hire a lorry from a haulage contractor to undertake the work usually done by *A's* damaged lorry. *A* has paid the haulage contractor £376 17s. 6d. Is *A* entitled to recover the sum of £376 17s. 6d. plus the £10 excess under *A's* current policy from *B*? The insurance assessor instructed on behalf of *B* maintains that *B* is entitled to subtract from *A's* claim the diesel oil saved, amount saved on the lorry's tyres and depreciation during the period *A's* lorry is being repaired.

A. As a general rule, in an action for damages in negligence the measure of damages will be the cost of replacement or repair of the property lost or damaged and in addition a sum to cover the loss of the beneficial use of the property. In view of this, we see no reason why *A* should not recover the sum of £376 17s. 6d. plus the £10 excess. In *Macrae* v. *Swindells* [1954] 1 W.L.R. 597, for example, the plaintiff was able to recover the total cost of hiring another vehicle while his own was under repair and there is no mention of deductions of the kind claimed by *B's* insurance assessor being claimed or allowed. See also *Pickfords, Ltd.* v. *Perma Products, Ltd.* (1947), 80 Ll.L.R. 513.

Income Tax—Deed of Covenant for Weekly Payment to Parents

Q. *A*, a bachelor, who pays tax at the standard rate on approximately £350 of his income, lives with his parents, who are pensioners with an income of approximately £250 per annum. *A* pays his parents a weekly sum. (1) If *A* executes a deed of covenant covering the whole of such sum, can it legitimately be said that there is no agreement for any return of the benefit arising under the deed, bearing in mind that *A* receives board and lodging from his parents, no further payment over and above the covenanted payment being contemplated? In support of *A*, it can be argued: (*a*) that there is no binding agreement to secure him board and lodging, and that his parents could, however unlikely it may be, evict him and still claim the benefit of the deed of covenant; (*b*) that tax advantages of a deed of covenant may be obtained notwithstanding that the motive which induces the payer to execute the deed is the hope or expectation of receiving some advantage from the payee (Potter & Munroe, Tax Planning, p. 3, referring to *Duke of Westminster* v. *Inland Revenue Commissioners* [1936] A.C. 1). (2) Alternatively, if *A* cannot legitimately follow course (1), there would appear to be no objection to *A* entering into a deed of covenant as to the gratuitous part (if any) of his weekly payment, making such payments over and above payment to his parents of a fair figure for food actually consumed and possibly something for lodgings.

A. (1) This is a question of extreme difficulty and no certain answer can be given. *A* is at present paying for his benefits and if he ceases to pay for them at the same time as the deed of covenant is entered into, the services nevertheless continuing, the inspector can argue that the payments under the covenant are not " annual payments " but are made in consideration of the services. On the other hand it is true that there is no binding agreement entitling *A* to the services in return for payments under the deed, and the position is not very different from that in the *Duke of Westminster's* case. The analogy would be even closer if there were evidence, perhaps in the form of a letter, that *A* continued liable to pay for the services quite outside the deed of covenant if his parents chose to demand payment. It must be admitted, however, that this introduces a further artificiality into a domestic situation. Since the cost of a deed of covenant is so small, we advise that it should be entered into and submitted to the inspector with full disclosure of the facts in the hope of obtaining a favourable ruling. (2) This seems to be a question of fact, and if the figures can be supported, there would be no objection to a deed of covenant for any payment above the fair figure for the services.

Variation of Trusts—Settlement for Benefit of Two Children—Variation in Favour of Third Child

Q. In 1952 our client *T* settled shares by deed upon trustees for the benefit of his two children, *T* 1 and *T* 2. Since then *T* 3 has come along rather unexpectedly and *T* wishes the settled

shares to be held by the trustees of the 1952 settlement on trust for all three children. It seems to us that this cannot be done since such a variation can hardly be said to be for the benefit of *T* 1 and *T* 2 and thus the court could not approve the arrangement under the Variation of Trusts Act, 1958. Do you agree ?

A. (1) We agree with your view. We cannot see how a reduction in the extent of the equitable interests of *T* 1 and *T* 2 can be for their benefit within the proviso to s. 1 of the Variation of Trusts Act, 1958. (2) Unless the settlement contained a power of revocation it does not seem possible to achieve *T's* object. In recent years courts have not assumed that a voluntary settlement should contain a power of revocation, particularly if tax considerations may be relevant. Consequently, it seems most unlikely that *T* could successfully claim to have the settlement set aside on the ground of fundamental mistake or to have a power of revocation inserted on the ground that it was omitted by error. You may find the comments on this subject in Emmet on Title, 14th ed., vol. 2, pp. 517, 518, helpful; various authorities are quoted.

Planning—Whether Sale of House with Less Land than Originally included in Application for Planning Permission constitutes Breach of Planning Law

Q. We act for clients who submitted an application for planning permission for the erection of a dwelling-house, and with their application they forwarded a plan of the land, and the local planning authority granted unconditional planning permission for the erection of such a house in response to the application. The clients have now erected and completed such dwelling-house in accordance with the house plans approved by the local authority and in accordance with bye-laws. However, our clients now wish to sell the house as completed together with land but excluding a small part of the land which was included in our clients' application for planning permission which was duly granted. Will you please state whether there is anything to prevent our clients from selling the house but with less land than was included in our clients' application for planning permission which was duly granted, and whether to do so could in any way constitute a breach of planning law or constitute a contravention of the planning permission which was granted to our clients.

A. We do not know of any restriction which would prevent your clients selling the house with less land than was indicated in the application for planning permission. If the land was previously used for some purpose other than as part of the curtilage of a house, it is likely that the planning permission would by implication grant permission for use for residential purposes of all land indicated on the application as being intended to be used in connection with the house. Nevertheless the generally accepted view is that a developer need not necessarily make complete use of every part of the permission granted to him. Consequently, we do not think there would be any breach of planning law or contravention of the permission. On the other hand, a further planning permission for the excluded land may have to be obtained if its use is to be changed.

Will—Repairs by Tenant for Life

Q. A testatrix died in 1946, having by her will given her real estate to her trustees upon trust to permit her husband to receive the rents during his life, he keeping the same in repair and paying all outgoings. This appears to create a strict settlement and the tenant for life would be entitled to call for a vesting deed. He has not done so, and the real estate has remained in the hands of the executors as personal representatives, but they have permitted the tenant for life to collect the whole of the rents. The tenant for life has neglected repairs and serious deterioration is now arising. Can it be said that the personal representatives incur any personal responsibility if they find it impracticable to do more than repeatedly urge the tenant for life to carry out necessary repairs and painting of the trust property, and are the personal representatives in this respect in the position of Settled Land Act trustees or as trustees for sale in the interval of time between the death and the date on which the property is vested in the tenant for life ?

A. We agree that there is a strict settlement and the widower is tenant for life (Settled Land Act, 1925, ss. 19 (1) and 117 (1) (xix)). There is very little authority on the enforcement of repairs since 1925. In *Haskell* v. *Marlow* [1928] 2 K.B. 45, the tenant for life neglected to repair although subject to a similar term (with a variation which is not material). The trustees recovered the cost of repairs from her executors and the case was argued on common law rules without regard to the vesting of the legal estate under the Settled Land Act. In this instance the legal estate is still vested in the personal representatives. Consequently, we think they hold as trustees and should not allow the tenant for life to take the rents unless he also carries out proper repairs. The representatives are at present estate owners and hold the land (subject to their powers for administration purposes) on trust to give effect to equitable interests (Settled Land Act, 1925, s. 16 (1) (i)), and so must look after the interests of remaindermen. We suggest the personal representatives should insist on their rights to take the rents until proper repairs are done and then offer to execute a vesting assent.

Administration of Estates—Share of Estate a Reversionary Interest

Q. T died in 1915 leaving his estate to his sons for life and then if there should be no children of his sons " in trust for all or any of my nephews and nieces who shall be living at my decease . . . and who . . . attain the age of twenty-one . . . in equal shares." One of the nephews, *W*, died in 1926 intestate leaving a widow and issue by his deceased first wife. It is thought that the widow received less than £1,000 on his death, although she had received substantially more during his life. The widow died in 1935 and her estate passed to her brothers and sisters. The surviving son of *T* died in 1955 and *T's* estate falls to be divided. None of *T's* sons had issue. Who is entitled to the share passing to *W*, his widow's brothers and sisters, or the issue of his first marriage ?

A. On the wording of *T's* will the nephews and nieces appear to have taken shares in the estate contingent on the death of the sons without children. *W's* share, in our view, forms part of his estate and his estate must be administered in accordance with the normal rules on intestacy. Thus, the widow's statutory legacy of £1,000 and interest must be made up and any further sum now payable will form part of her estate and pass to her brothers and sisters. Any balance of the sum due to *W's* estate is then to be held on statutory trusts for issue of the deceased; it is immaterial that they were issue by the deceased's first wife. We consider that on *W's* intestacy the share in *T's* estate was a reversionary interest and so it was not liable to be sold. (Administration of Estates Act, 1925, s. 33 (1).) Consequently, we do *not* think that the widow's estate can claim that the estate is entitled to interest on half its value during the widow's lifetime.

NOTES AND NEWS

COUNTY COURT BENCH

Consequent upon the retirement of his honour Judge Clothier, Q.C., one of the judges of circuit 48 (Lambeth), on 1st November, the following arrangements have been made. His honour Judge Barrington, T.D., has become one of the judges of circuit 48 (Lambeth) in succession to Judge Clothier, Q.C.; his honour Judge Wingate-Saul has become the judge of circuit 47 (Dartford, Southwark and Woolwich) in succession to Judge Barrington; and his honour Judge Potter has become one of the judges of circuit 56 (Croydon) in succession to Judge Wingate-Saul.

Mr. Reginald Withers Payne has been appointed a county court judge and will be one of the judges of Circuit 14 in Yorkshire. He will relinquish his Recordership of Huddersfield.

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